हैं । ऐसे लोग थे । वहां पर झगड़ा कुछ और कहना कुछ । मान्यवर, मैं यह कहना चाहता हूं कि अब हमारे उत्तर प्रदेश में पुलिस में भी जातीयता का जहर भर गया है । जब त्रियुगी यादव के घर चार आदमियों की हत्या हुई थी तो भी दूध नाथ पाण्डेय की बिरादरी का थानेदार था और आज भी इस हत्याकांड में पकड़ कर मारने वाला दूध नाथ पाण्डेय की ही बिरादरी का था, वहां भूमिहर लोग अपने आप को पाण्डेय लिखते हैं, वह था । मान्यवर, बिहार में जातीय सेनाएं चल रही हैं, बिहार में तमाम हत्याएं हो रही हैं लेकिन अब उत्तर प्रदेश में भी जातीय हत्याओं का सिलसिला शुरू हो गया है और पुलिस कहती है इनके बारे में कि अपराधी इतिहास है लेकिन मेरा आपसे यह निवेदन है कि अगर इनका अपराधी इतिहास है तो माननीय गृह मंत्री जी यहां रखें । मैं ऐसा समझता हूं कि कोई अपराधिक इतिहास नहीं है । लेकिन पुलिस जबदस्ती रिकार्ड बनाती है, किस तरह से जालसाजी करती है उसकी जानकारी तो यहां बैठे हुए अधिकांश लोगों को है । बहुत बड़े लोगों को भले न हो, लेकिन गरीब लोगों को तो है । इसलिए मैं कहना चाहता हूं कि यह नर संहार जो हुआ है, लगता है कि बिहार का तूफान यहां आने का संकेत देता है । उत्तर प्रदेश में भी जातीय युद्ध इससे शुरू हो जायेगा । अभी हमारे पाण्डे जी ने कहा कि दुनिया के दलितों के नेता हैं । मैं भी कोई बहुत ऐतराज करने के लिए तैयार नहीं था लेकिन अब मैं पूछना चाहता हूं कि क्या कन्सीरा में मारे गये लोगों के नेता हैं कि नहीं अरवल में जो लोग मारे गये उनके नेता हैं कि नहीं कफल्टा में जो लोग मारे गये उनके नेता हैं कि नहीं हैं? साउपुर में जो मारे गये उनके नेता हैं कि नहीं और देहुली तथा करहना में जो मारे गये उनके नेता हैं कि नहीं हैं ? अगर नेता हैं तो कहां हैं वह दिल। इनका दर्द कहां है और मैं इस सदन से जानना चाहता हूं कि क्या इस देश में उन्हीं लोगों को जीने का हक है जो परम्परागत बड़े लोग हैं, परम्परागत जिनके पास अवैध हथियार हैं, परम्परेगत सम्पत्ति है और वे लोग जो हर प्रकार से वंचित चले आ रहे हैं, पुश्त दर पुश्त से बल्कि यूं कहें कि सभ्यता के विकास के समय से तो क्या उनको जीने का हक नहीं है ? क्या माननीय राजीव गांधी उनके नेता नहीं हैं ? इसलिए मान्यवर मैं आपसे कहना चाहता हूं कि यह केवल उत्तर प्रदेश का मामला नहीं है . . (व्यवधान) अब यह मामला बढ़ता जा रहा है और इसको रोकने के लिए केन्द्र सरकार को हस्तक्षेप करना चाहिए और उत्तर प्रदेश की सरकार को बर्खास्त करना चाहिए ।

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : माननीय उपसभापति महोदय, माननीय कृशवाहा जी ने जो कहा है . . (व्यवधान) मेरा स्पेशल मेंशन है . . . (व्यवधान) डिप्टी चेयरमैन हौज एलाउड भी । मान्यवर, मैंने स्पेशल मेन्शन दिया था और मुझे आश्वासन दिया गया कि जो कुछ भी कृशवाहा . . जी ने कहा है उससे मेरा पूरा समर्थन है । उत्तर प्रदेश में पुलिस ने जो निर्दोश लोग हैं जो गरीब लोग हैं जो बंजारे हैं उनकी हत्याएं की हैं . .

MR. DEPUTY CHAIRMAN: Please resume your seat. (*Interruptions*) Not permitted.

SHRI SATYA PRAKASH MALAVIYA:*

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE COMMISSIONS OF INQUIRY (AMENDMENT) ORDINANCE, 1986 (NO. 6 OF 1986)

II. THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1986

MR. DEPUTY CHAIRMAN: We now take up the Statutory Resolution and the Bill together for discussion. Shri Advani.

SHRI LAL K. ADVANI (Madhya Pradesh): Mr. Deputy Chairman, Sir, I move the following Resolution:

> "That this House disapproves of the Commissions of Inquiry (Amendment) Ordinance, 1986 (No. 6 of 1986) promulgated by the President on the 14th May, 1986."

*Not recorded as ordered by the Chair.

[Shri Lal K. Advani]

Sir, I would regard it as a sad day for Parliament if this Ordinance were to be approved by Parliament and the Bill which is sought to be moved to replace the Ordinance is accepted by Parliament.

Sir, I object to the Ordinance because of its timing, I object to it because of the principle underlying it and I object to it because of the context in which the Ordinance was promulgated to suppress a particular report of an Inquiry Commission. I will deal with all these issues one by one.

First of all, the timing. As it is obvious, it was promulgated on the 14th of May, 1986. Fourteenth of May, 1986, is very significant for the Rajya Sabha because it was on the 14th May, 1986, that the Rajya Sabha was adjourned. It was not prorogued, the prorogation came three days later, on the 17th of May. Even before the Rajya Sabha was prorogued—it was only adjourned *sine die* by the Chairman—this Ordinance was promulgated. It was literally taken aback because in all these 40 years I have not been able to find a single such example where on the day on which the Rajya Sabha is adjourned, on that very day an Ordinance is promulgated.

Now, Sir, I do not want to go into the constitutional details of a legislature vis-a vis executive or the duties of the executive vis-a-vis the legislature, but it is accepted and understood by all that law-making is the exclusive province of Parliament and the legislature. The executive does not make laws, the executive only administers laws. And if in spite of that our Constitution markers framed Article 123 which empowers the President to promulgate an Ordinance when Parliament is not in session,, the Constituent Assembly contemplated that if would be invoked in very rare situations, in which the Parliament was not meeting, the Parliament was unlikely to meet shortly and there was some imperative urgent necessity of enacting a law. It is, therefore, they empowered the President to enact the law in that period. They never contemplated, they could never even imagine that article 123 will be stood upon its head. An ordinance is to be promulgated when Parliament is not in session, but Parliament is not to be adjourned to promulgate an Ordinance. I regard this as a perverse inversion of Article 123 where Parliamtnt is adjourned only to enable the Government and the executive to promulgate an Ordinance.

I am sure, Sir, if I had the law Ministry's documents with me, or if you were to examine the Law Ministry's documents when this particular Bill or the Ordinance was framed, you would find that Parliament was in session at that time, I think it was the duty of the executive if it thought that there was necessity of any such law whereby the Commissions of Inquiry reports fflcan be withheld from Parliament, that Bill could have been brought before Parliament straightway and the approval of Parliament could have been sought for. But instead, what they did is to adjorn the House, promulgate an Ordinance and then come to Parliament three months later with a *fait accompli* and thus reduce Parliament to a rubber stamp of the executive. The words I used namely 'the rubber stamp' of the executive are the words that were used by the first Speaker of the Lok Sabha, hon. G. D. Mavalankar, who entered into a prolonged correspondence with the then Prime Minister as to why Ordinance-making should be restored to so frequently. Parliament should not be made a rubber stamp of the executive, as Government is repeatedly doing he aid. Of course, I realize there is no point in comparing these times and those times, there is absolutely no point. Even then, even in those days when Ordinance-making was not as lightly and casually resorted to as it is now, this was the comment made by the Speaker of the Lok Sabha and I think it is even more relevant today. This is in respect of the timing of the Ordinance

Now I come to my more important objections to this Ordinance and to this Bill and the principle underlying this Ordinance. I regard this Ordinance as a brazon assault on the authority of Parliament. I am unable to find any other paralle. This is the only Bill of its kind where something that we had acquired, a right that we have acquired, is sought to

be taken away. I was going through reports of the proceedings in the other House. I cannot quote from them, but I saw that the Home Minister—the Minister is here—took the stand that after all if we could work the Commissions of Inquiry Act from 1952 to 1971, without any such provision obligating the executive to place reports of the Commissions of Inquiry on the Table of House, why can't we do it now? After all it was working quite satisfactorily upto 1970-71 when this particular amendment was brought in.

Now it was not brought in casually; it was brought in as a result of a review of the working of the Act of the preceding Chairman of the Joint Select Committee of Parliament. It was after that Joint Select Committee's report that an amendment was made in the original Act providing that every report of a Commission of Inquiry should, within six months of its receipt by Government, be placed before Parliament along with a memorandum of action taken. I would only like to draw attention of this House to the fact that a very distinguished member of the Joint Select Committee which introduced this particular amendment was Mrs. Indira Gandhi. The Chairman of this Joint Committee recorded in his report—and I quote:

> "During the course of evidence given before the Committee, it was brought to their notice that many a time reports of Commissions of Inquiry on important issues of national interest could not see the light of the day even though considerable money from public funds had been spent threon".

Then it goes on:

> "The Committee, therefore, considers it necessary that a specific provision should be made in the principle Act requiring the appropriate Government to cause the report of the Commission to be laid before House of the People or legislative assembly, as the case may be, together with memorandum of action taken within a period of six months from the date of submission of the report."

I have quoted this from the Committee's report for another reason also. I would have been happy if the person who drafted this was here. Unfortunately he is not here. Otherwise I was expecting him to Joint Committee had observed that the Commissions of Inquiry Act required a judicial commisson to go into a matter of public importance and then to report to the Government; till now the reports had been submitted to the Government but the Government had withheld them from Parliament only because there was no obligatory provision in the law requiring Government to do so; therefore it was necessary to bring in this provision. And it may interest the House to know that the 18-19 years by a Joint Select Committee which made this recommendation as a result of which Parliament acquired this right to secure reports was none else than the Deputy Leader of this House, Mr. N. K. P. Salve. I wish Mr. N. K. P. Salve were here. Perhaps he is not willing to defend this taking away of the right by Mr. Chidambaram. It is against this background that I regard this particular move as a retrograde move. It has not happened in any other democracy. And it has not happened even in India.

I am a member of the Subordinate Legislation Committee. As a member of this Committee I have know that there were earlier statutes and laws where there was no provision saying that the rules must be laid on the Table of the House. There were no laws requiring bye-laws or orders etc. under those particular statutes to be presented to Parliamnt. Gradually the Subordinate Legislation Committee on the one hand and Parliament on the other hand had seen to it that the law is changed and we have had a Subordinate Legislation Act for this purpose requiring that even in those laws where no such provision was there, all rules shall be placed on the Table of the House so that Parliament has the right to amend those rules also and subordinate legislation does not become a blank cheque for the executive to do whatever they want. This is the trend and suddenly this trend is sought to be reversed. We are faced with an Ordinance which the Minister wants us to ratify

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where by by this particular right which we got in 1971 is taken away from us, so that the Government, in its own judgement, can come to the conclusion that this particular report should not be placd before Parliament. So, Sir, I am really apprehensive.

Today he has applied this particular provision only to reports of inquiry commissions. Tomorrw the executive may take it into its head that these Public Undertakings Committee, Public Accounts Committee and the Committee on Scheduled Castes and Scheduled Tribes are investigating matters, probing into scandals which, if they come to light, public interest would be affected adversely. After all, reports of the Committee on Scheduled Castes and Scheduled Tribes very often reveal what kind of atrocities are being perpetrated upon Harijans and Tribals and how the executive and other authorities in the Establishment try to suppress them. Now the Government can very well feel that this is a particularly very damaging report, if this report of the Committee on Scheduled Castes and Scheduled Tribes is published. if this is placed before Parliament there will be anarchy outside, there will be civil strife outside and, therefore, it is in public interest that this particular report be suppressed. I do not know where you are going to land up. This "public interest" is such a phoney argument that it struck me only yesterday when I had asked a question about the Sen Gupta Committee report on public enterprises. I had asked about the recommendations of the Sen Gupta Committee and the Government's action thereon. I had asked the same question in the month of April also, only three months back. Yesterday, of course, the Minister gave me a summary of the recommendations and the Government's action taken thereon. I do not know how far my friend, Vasant Sathe, has contributed in marking the Government come out with that frank report about the Sen Gupta Committee. This morning I have read Vasant Sathe's article in the *Times of India* on the front page. I do not know how far that is the Government's policy. But the article is a wholesale, almost unqualified, unreserved dennunciation of the public sector...

SHRI A. G. KULKARNI (Maharashtra): Vasant Sathe is a trouble shooter whether it is on the Presidential form of Government or the public sector. (*Interruptions*).

SHRI LAL K. ADVANI: Anyway, I was referring to the Sen Gupta Committee's report and yesterday I certainly got a brief—not the whole report—summary of the recommendations made. But do you know what the House was told about the same question in the month of April? I had asked the same question in the month of April and the answer given to me by the Industries Minister on the 28th of April was that "the recommendations of the Committee are being examined by Government at various levels, at this stage it will not be in public interest to divulge the contents of that report." Now this "public interest', a phoney argument, is used for this purpose. The Committee's report was submittd to Government in December 1984, one and a half years back. And one and a half years later when I inquire from the Government as to what is the Committee's report, what are the recommendations made, what is the Government's reply? The Government takes shelter behind "public interest," and says "In public interest we cannot tell the Rajya Sabha, we cannot tell Parliament." And yesterday why did he reply to me? Because, after April, in the month of June I found newspapers containing almost the text of the report which of the recommendations have been accepted and which of the recommendations have been rejected. The entire thing was published in the press and, threfore, Government was left with no option but to tell the House at least a summary of the report. It would have been more intelligent and more fair for them to come out with the report even yesterday. Even yesterday they did not do that. I am giving this only as an example of how the executive is likely or is prone to or is habituated or is in the habit of abusing this argument about public interest to suppress even innocuous information from Parliament and so from the people. Therefore, I regard

this particular Ordinance and this paritcular. Bill as being subversive of the democratic principle of executive accountability and also the people's right to information.

Sir, in this regard, I have seen a judgement of the Supreme Court, which I regard as very very relevant and pertinent to today's dicussion. That judgement was in connection with the High Court Judges case. In the course of that judgement Justice Bhagwati—He was Justice Bhagwati at that time and now he is the Chief Justice of India—referred to the implications of article 19(2). Article 19(2) is the provision dealing with the Fundamental Right to freedom of speech and expression. The Supreme Court interpreted the right of free expression under article 19 as being inclusive of the right to information. This is what the Justice Bhagwati says:

> "No democratic government can survive without accountability, and the basic postulate of accountability is that the people should have information about the functioning of the Government."

He goes on to add:

> "Now if secrecy were to be observed in the functioning of government and the processes of government are to be hidden from public scrutiny, it would tend to promote..."

What would be the consequences?

> "... and encourage oppression, corruption and misuse or abuse of authority though it would all the shrouded in the veil of secrecy without any public accountability.'

Therefore, Sir on principle this is my second objection to this particular Ordinance, that it subverts the principle of executive accountability and the people's right to information which I regard as one of their Fundamental Rights.

After all, we are not asking for any defence secrets though defence secrets are available to the enemies. What we are asking for is just the report of the commision of inquiry which you have set up and which might be set up even by a resolution of Parliament, By this particular Ordinance that you have brought, even if this Parliament decides that in such and such a matter a commission of inquiry should be set up and a resolution is passed in that regard, even then, the executive acquires the powers to suppress that commission of enquiry report from Parliament. I do not really see the logic of the whole thing. It completely baffles me. It goes beyond me. Therefore, I have from the very beginning felt that not only is it politically immoral but it is also constitutionally dubious.

May be in this particular case the High Court gave a certain judgement in a certain context. I am not going into it. But on some day on the basis of what Justice Bhagwati has said that it violates and infringes the right under article 19, the right to information that a citizen possesses and the right to information that Parliament does possess certainly it may be declared constitutionally *ultra vires,* it violates the Constitution. May be.

But that is my third objection though not my major objection. I am more concerned with the immorality of the whole thing and the encroachment into the sphere of Parliament, legitimate sphere of Parliament.

Now I will deal with the specifics of the whole matter. As I said, I am opposed to the underlying principle and further I am opposed to the specific context in which this particular Ordinance has been issued.

1.00 P.M.

A commission of inquiry was set up up to probe into the circumstances in which Mrs. Gandhi was killed. Natuarlly the Government was concerned. Naturally every citizen of the country is deeply concerned. I do not want to mention names. But I can say that a senior member of the Cabinet poke to me that very evening when this tragedy occurred. He said "I feel that the ramifications of this particular tragedy are far, far wider that appear on the surface. "On the suface it would be seen that two persons

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have committed this dastardly deed. What really baffls me he said is: "Why were these two parsons shot thereafter? I am not able to understand this.' Subsequenly someone told me that in accordance with the written provisions of what is called the 'Blue Book' which deals with the security of VIPs, if any such tragedy takes place, those who are entrusted with the responsibility of protecting that VIP, they have been given strict instructions to see that assassins or the persons who try to do this henious crime are not killed. They should only be immobilised. It should be seen to it that they are arrested alive. In this particular case, it is only a matter of chance that one of them has survived even after being hit with five bullets. It is a matter of chance. Just as the Government is concerned, the ruling party is concerned, I think the whole country is concerned, and keen to know how did this happen? Till today we do not know who were the persons who shot dead these two persons. Who were they? They were so-called members of the indo-Tibten Border Patrol. Why did they do it? According to the press reports both the alleged assasins after shooting Mrs. Gandhi surrendered. At "हमें जो करना था, हमने कर लिया, अब आपको जो करना है, कीजिये" this is what they said. At least this is the report.

Now, what do you want to achieve by suppessing this report? Do you want every magazine in the country to publish its own version of what the commission has concluded? Do you want that whatever has been authentically found out by the Thakkar Commission only that much is known to the people what you want them to know? Why do you want to suppress it? I have with me 'India Today' magazine July 31, 1986. It has written an article entiteled "Appointment with Death" which runs into two pages wherein it has raised all kinds of questions several names have been mentioned. I do not want to mention the names, because I am not interested in seeing that any one is maligned without any justification. But this report certainly gives an impression of a leak somewhere. Whether that leak is a careless leak or whether that leak is a contrived leak that is for you to say. Why do you want to hide this report from Parliament?

Let me in this context also quote from the "India Today" of 15th June, 1986 wherein an editorial entitled "Ruling by Edict" appeared. It says:

> "Media reports say the Commission has listed a series of errors committed by senior Government officials, and pointed to the fact that but for a last-minute change of schedule, Mrs. Gandhi would have walked safely to her appointment with a TV crew while Beant Singh and Satwant Singh had gone to the toilet."

I do not want to add after that But, is this true? Could Mrs. Gandhi have been saved? If so, who is responsile? Why did this last-minute change took place?. If we agree to what the Government proposes to do—if we pass this Bill—what are going to be the consequences? Even that also nas been spelt out in this "India Today" of 15th June, 1986 editorial. I can do no better than quote :

> "There could be other temptations in future to invoke the new law. What if, for instance, the Ranganath Mishra Commission determines that a few Congress(I) stalwarts who are now Ministers in the Central Government were guilty of some role in the Delhi riots that followed Mrs. Gandhi's assassination? Will the Government suppress that report too, in the public interest? Or, to take another instance, what if the Kirpal Singh Commission has decided that Air-India was guilty of not having taken adequate anti-terrorist precautions, and that this was an important reason for Flight 182 getting blown up over the Atlantic last summer? Will the Government suppress that report too?

Now, thse are the questions that naturally arise if we are to give sanctions and approval to the Ordinance of the Bill that the Government has brought in here today. I would like to state my last objection and that is when this new Government came in, particularly because of what the Finance Ministry has been saying and doing, the impression was that at least this Government is going to be something like an open Government. He has been talking about even budgetary processes not taking place behind the shroud of secrecy, behind the veil of secrecy. Let us discuss, he said. What is the difficulty? I approve of that approach. I do not dispute it but I see no reason why in matters of this kind, the veil of secrecy is sought to be brought in to shroud something that should be opened for public gaze. Why is there this secrecy? After all secrecy can only provide grease for rumour mills. Once you have secrecy, then you will have all kinds of rumours and all kinds of people will be accused.

Sir, I have tritd to view the subject also in the context of the attitude of various democracies to the problem of information. I can say that the world-over, the direction of change is that even a common citizen should be entitled to receive more and more information. So far as Parliament is concerned, its right to information is accepted as undisputed and unquestioned. But even the common citizen is becoming entitled to receive greatest information. For democracy to succeed the world-over, more and more laws relating to the citizens rights of information are being passed. Even in Britain, they have been thinking in terms of such a law. In Britain, there have been a series of white-papers, a series of expert Committees and all of them have tried to see that officials also should not be suppressed in the matter of official information only what is really necessary for defence and security purposes, only that is kept secret. Otherwise, there should be more and more open Government. Therefore, I regard this Ordinance as a serious assault on open Government and a move in the direction of secret Government which is the hall-mark of autocracy and dictatorship, not of democracy. I oppose it.

Sir, we are a democracy. We are a parliamentary democracy and we are proud of it. People may scoff at our poverty, they can point out that we have not developed in accordance with our potential. But everyone respects us for the fact that we have successfully worked parliamentary democracy in this country for the last forty years. In the past two decades, we have often come across Bills and proposals which have tried to curb some of the basic ingredients of democracy. If I were to identify the four pillars of democracy, I would say that a live, vigorous Parliament, an alert Opposition, a free press and an independent judiciary; these are the four pillars of democracy. Occassionally, we have come across a law or a Bill which seeks to curb the press or which seeks to make a certain matter non-justiciable taking it out of the purview of the judiciary or a matter in which political parties are affected. For example, many of these security laws which we have always opposed because they are likely to be abused against the political opponents but Sir, this is the first time and Mr. Chidambaram would have the honour of doing it that a law is being passed against Parliamtnt. (*Interruption*).

SHRI DIPEN GHOSH (West Bengal): Parliament has been asked to pass a law against Parliament.

SHRI LAL K. ADVANI: Yes, that is what I am saying. Now what is being sought is that we are being asked to muzzle ourselves, we are being asked to vote for a measure so that our own authority is curtailed. an authority which was given to us by Joint Select Committee of Parliament way-back in 1971 and an authority which Parliament has not abused or misused, in any manner, during the last 18 years. I see no reason why it

[Shri Lal K. Advani]

should be done. I know it is rather difficult after the Lok Sabha has passed this Bill to vote against it. But I would like all my friends on the treasury benches, on the ruling party to consider what has been their response to such matters till now. In various Committees, in Public Accounts Committee, in Public Undertakings Committee in the Estimates Committee we are often confronted with a situation where the Government wants to keep back something on the ground that it will not be in public interest to disclose it. Has any committee accepted it? Irrespective of political differences, all members of all these committees have said, "No. So far as Parliament is concerned, you cannot deny us the right to information." Parliament does not take executive actions. So far as taking executive action is concerned, it is with the Government. But so far as information is concerned, we cannot be denied any information. This has been the consistent approach of all committees, and this has been the consistent approach of all Members of Parliament, irrespective of which side they belong to. I would like to plead with you this is the second chamber. Even though the Lok Sabha has passed this Bill, this is the chamber where we can apply a brake and say "No, we are not agreeable to this particular proposal." You refer it to a Select Committee of this House, or take any other measure. It is up to you. Of course, we of the opposition will oppose it. We will give our arguments. But when we give our arguments, we look forward to Members of the ruling party to respond to the voice of reason to the voice of sanity, to the voice of parliamentary ethics. Here is something that Parliament has acquired; why should we leave it? Is there any compelling reason? In Britain, the House of Commons had to wage centuries-long struggle against the Sovereign, the King, to secure for Parliament all its rights. Here the Constitution has given us the rights; the various laws and various conventions have given them to us. And today they want to turn the clock back and say, "No, it is not convenient for us; we will suppress it." Once you give this authority, the consequences will be very bad for Parliament. This is like giving marching orders to Parliament to go to its own doom. We should not obey the order.

I would appeal to my colleagues here, those who belong to the Opposition parties and those who are opposed to this Bill and who have various Governments in the States in office, in West Bengal, in Karnataka, in Andhra Pradesh, in Tripura, in Tamil Nadu. If they are opposed to it—because this law gives authority not merely to the Central Government but gives authority even to State Governments to withhold reports from the respective State Assemblies, when it says "appropriate Government"—I would like them to declare that so far as their Government is concerned, they will not invoke this Bill or Ordinance at any time and they will not withhold any report of any commission of inquiry from their respective State legislatures. That also would be a salutary counsel to the ruling party. With these words, I commend my resolution for adoption by this House. Thank you.

The question was proposet

THE MINISTER OF STATE IN THE MINISTRIES OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Sir, on behalf of Shri Buta Singh, I move:

> "That the Bill further to amend the Commissions of Inquiry Act, 1952, as passed by the Lok Sabha, be taken into consideration."

Sir, I do not wish to make a long speech at this stage. I have heard with rapt attention what the hon. Member, Shri Lal K. Advani, said just now while moving his statutory

resolution. Sir, I have read criticism of this Ordinance and this Bill. Such criticism was made in the press immediately after the Ordinance was promulgated on the 14th May, 1986. May I say with great respect to all our critics that their criticism is based on an inadequate appreciation of the contents of the Bill. Throughout Shri Advani's speech the refrain was that this is executive arrogance, this is the executive arrogating the power to itself to withhold from Parliament what is Parliament's right to know. With great respect Sir— and when I speak again on the Bill when it is taken up for consideration I will explain it further—the Bill does no such thing. On the contrary what the Bill says is that in four specic situations, on four specific grounds which go back to words in the Constitution by which the hon. Member, Mr. Advani swears and by which I swear, on four specific considerations, if the Government reaches a conclusion that the report shoudd not be placed before Parliament, then the Government is bound, obliged, mandated to come before Parliament and seek approval of that notification. The power is still with Parliament. The power is not taken away by the executive. The executive comes before Parliament with humility and submits to the wisdom and decision of Parliament. That is the language of sub-section (5) of Section 3 and the language of sub-section (6) of Section 3. It is difficult for me to understand how this can be characterised as the executive arrogating to itself a power or a right which the executive does not purport to do at all in this Bill. It is true that I have repeatedly said that this Act was worked for 19 years without sub-section (4) of Section 3. During those 19 years nobody called that the death-knell of democracy. Nobody said that Parliament was being superseded or overriden. Nobody said that it was incompatible with open Government. Nobody said that the right to information of Parliament has been taken away. For 19 years we worked an Act. Then, when we found, and this is the only reason given by the Joint Committee, that money was being spent yet reports were not being placed sub-section (4) of Section 4 was added. Today again, after working the Act for 15 years, we find that the Act requires to be amended. I am not saying that five years from today, ten years from today, the Act cannot be amended again. Maybe, it will be; maybe, it should be; maybe, by working these provisions we will find that some other provisions have to be added. But to say that no Act should be updated, no Act should be amended merely because an amendment was made in 1971, is to freeze the country at a point of time. I do not believe that is what Parliament intends to do. Today we find that because of various developments, various reasons, compelling reasons, on four specific grounds Parliament should have the right, not the executive but Parliament, to approve of an executive claim, executive decision, that a report shall not be placed before Parliament. If you look at the provisions of sub-section (5) of Section 3 and sub-section (6) of Section 3, that is what this Bill seeks to do. We always, I believe, grow wiser and I think today we live in such dangerous times that it is necessary for Parliament to arm itself with this exceptional power to be exercised very sparingly in very exceptional circumstances. On behalf of the Government I can make this promise that we will use this power very very sparingly, only on those rare occasions when the overriding public interest dictates that a particular report should not be placed before Parliament at that time.

With these words I beg to commend that the Bill which I have just moved to amend the Commisions of Inquiry Act be taken into consideration.

MR. DEPUTY CHAIRMAN: There are four amendments to the proposed Bill.

SHRI SATYA PRAKASH MALAVIYA (Uttar Pradesh): Sir, I move:

1. "That the Bill further to amend

[Shri Satya Prakesh Malaviya]

the Commissions of Inquiry Act, 1952, be referred to a Select Committe of the Rajya Sabha consisting of the following members, namely:—

1. Shri Shanker Sinh Vaghela
2. Shri J. P. Goyal
3. Shri Sharad Yadav
4. Shri Gurudas Das Gupta
5. Shri Ram Awadesh Singh
6. Shri Kailash Pati Mishra
7. Shri Chaturanan Mishra
8. Prof. C. Lakshmanna
9. Shri Ait Singh
10. Shri Ghulam Rasool Matto
11. Shri Satya Prakash Malaviya

with instructions to report by the first day of the next Session."

SHRI N. E. BALARAM (Kerala): Sir, I move:

2. "That the Bill further to amend the Commissions of Inquiry Act, 1952, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri K. Mohanan
2. Shri Atal Bihari Vajpayee
3. Shri Parvathaneni Upendra
4. Shri M. S. Gurupadaswamy
5. Shri N. E. Balaram

with instructions to report by the first day of the next Session."

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): Sir, I move:

3. "That the Bill further to amend 1952, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Dipen Ghosh.
2. Shri Aladi Aruna *alias* V. Arunachalam
3. Shri M. S. Gurupadaswamy
4. Shri Puttapaga Radhakrishna
5. Shri Lal K. Advani
6. Shri Virendra Verma
7. Shri V. Gopalsamy
8. Shri A. G. Kulkarni
9. Shri Ghulam Rasool Matto
10. Shri Chitta Basu
11. Shri Nagen Saikia
12. Shri Murlidhar Chandrakant Bhandare
13. Shri Kalpanath Rai
14. Shrimati Krishna Kaul
15. Shri Pawan Kumar Bansal
16. Shri Parvathaneni Upendra

with instructions to report by the first day of the next Session."

SHRI K. MOHANAN (Kerala): Sir, I move:

4. "That the Bill further to amend the Commissions of Inquiry Act, 1952, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Lal K. Advani
2. Shri Parvathaneni Upendra
3. Shri Chitta Basu
4. Shri Gurudas Das Gupta
5. Shri Makhan Paul
6. Shri Ait Singh
7. Shri V. Gopalsamy
8. Shri Dipen Ghosh
9. Shri K. Mohanan
10. Shri Mostafa Bin Quasem
11. Shri Nirmal Chatteree

with instructions to report by the first day of the next Session."

(The amendment also, stood in the name of Shri Dipen Ghosh, Shri Mostafa Bin Quasem and Shri Nirmal Chatterjee

The question were proposed.

SHRI DIPEN GHOSH: Mr. Deputy Chairman, Sir, as the Minister of State for Home Affairs, Mr. Chidambaram, has stated that he listened to Mr. L. K. Advani with rapt attention, I also listened to the Minister of State in the Ministry of Home Affairs, Mr. Chidambaram, with rapt attention. But I am unable to apreciate what the Minister of State has stated just now. I would go point by point a little later. But, at the outset, I would like to say, as you know, that there was a saying, particularly during the period of the functioning of the British here as: "Constitute a commission if you want to shelve an issue of public importance.". And, Sir, we have inherited this from the British and Mr. Chidambaram might have come to know by this time, after presiding over the Department of Personnel for some months in the meantime, this British legacy in the matter of administrative functioning. But now, Sir, after inheriting the British legacy of constituting a commission when you want to shelve an issue of public importance, it seems that our Government has extended the Anglo-Indian system of functioning, which it has developed, a little further and the extended principle seems to be "hide the report of such a commission from the public if it goes against the powers that be." So, Sir, so far the Government was hiding itself behind the Commission; now it hides the Commission from the public! The net result is—Mr. Chidambaram is to note—that the Government's unaccountability has been sought to be institutionalised by making this Bill into a law. The Government seeks to immunise itself against public scrutiny by the people's representatives in Parliament or the State Legislatures, as the case may be, of its conduct that raises some public controversy or doubts.

Sir, Mr. Advani, while putting forth his views on the motion for disapproval of this Ordinance, has stated that it was a brazen onslaught or assault on Parliament or parliamentary system. But I think that whatever adjectives we may employ or whatever words we may use to term it or to describe it, whether we call it an affront to Parliament or a marching order to Parliament to the burial ground or an outrageous act on Parliament, they would sound mild only, in my opinion.

Sir, Mr. Advani has already stated about the timing of issuing the Ordinance. Now I want to tackle the point which Mr. Chidambaram has mentioned. I am not going to repeat what Mr. Advani has stated already. I want to say something, particularly taking care of Mr. Chidambaram's point that we have failed to appreciate adequately the purpose of this Ordinance. The Minister has stated that this Ordinance was issued and now the Bill has been brought forward for replacing that Ordinance, not to take away the right of Parliament, but in fact Parliament has been given the right to say which report of which commission would be withheld from the public. That is being enacted, as I could understand after his illuminating speech which he has made just now. Now, I come to the point that according to the Commissions of Inquiry Act any report of a commission has to be placed before Parliament within six months of its receipt. The Thakkar Commission submitted its report on 19th November, 1985 . . .

SHRI SATYA PRAKASH MALAVIYA: Mrs. Gandhi's birthday.

SHRI DIPEN GHOSH: Yes, on Mrs. Gandhi's birthday—19th November 1985. If you calculate six months from that date, the time-limit ends on 18th May 1986. During these six months you were having Parliament Session, both of Lok Sabha and of Rajy Sabha, and this report should have been laid before Parliament during this period. Lok Sabha adojurned on 8th may and Rajya Sabha adjourned on 14th May. You had received the report on 19th November. Therefore, you had Parliament Session, the Bud-

[Shri Dipen Ghosh]

Session, from February onwards up to 8th May in Lok Sabha and up to 14th May in Rajya Sabha. If the Government had the intention of taking Parliament into confidence as the Minister has claimed now, that the intention of this was to take Parliament into confidence on each occasion, then, be fore withholding the Thakkar Commission report from the public or from Parliament, the Government should have come to Parliament and sought its approval. But it has not done so. Therefore, it betrays its professed intention. Now, Mr. Chidambaram says, you have not to worry, this Bill empowers Parliament to exercise its right either to disclose or suppress any report of any commission because on each occasion it will be brought before Parliament. But if the intention of the Government was so simple and clear, and so honest and pure, then the Government could have come anytime during the long Budget Session and sought approval of Parliament saying that this was the situation in which the Government thought that this report should be withheld from the public. And that Session could have been held in camera also. The Presiding Officers of the two Houses could take the leaders of various parties and groups represented in Parliament into confidence and say that this was an unprecedented situation, that this was an extraordinary situation, in which this thing had happened, the Commission had reported like this, and, therefore, this need not be disclosed to the public and the Government accordingly sought Parliament's approval: then we would have agreed to what Mr. Chidambaram had said now, that his intention was well and good. But we know, that in the name of public interest an Emergency was proclaimed in our country and all rights and privileges of the people, from judiciary down to the citizen, were taken away in the name of public interest. We know what havoc can be played by the executive or the powers that be. with the rights and privileges of the people in the name of public interest. Therefore, Sir, I cannot take what Mr. Chidambaram has stated on its face value because a burnt-child, dreads fire. And naturally, the intention with which this Bill is sought to be movel. .

AN HON. MEMBER: Sir, after lunch.

SHRI DIPEN GHOSH: Shall I continue?

MR. DEPUTY CHAIRMAN: You continue after lunch.

Now the House stands adjourned till 2.30 P.M.

The House then adjourned for lunch at thirty-one minutes past one of the clock.

The House reassembled after lunch at thirty-two minutes past two of the clock. Mr. Deputy Chairman in the Chair.

SHRI DIPEN GHOSH: Mr. Deputy Chairman, Sir, what I was saying is that had the Government the good intention to give Parliament the right to decide which report of which commission would be disclosed or suppressed and for that purpose had the Government the intention to bring forward this Bill, then the Government had the opportunity to take Parliament into confidence when they were in possession of the Thakkar Commission's report and the Government would not have issued the Ordinance as soon as that six months' period was elapsed with the adjournment of the Rajya Sabha, on the same night of the day of adjournment. So, Sir, the intention as has been put forth by our Minister of State for Home Affairs, Mr. Chidambaram is not so simple and pure as it appears.

Sir, we have already stated that even in our country in the name of public interest emergency was proclaimed denuding the people at all stages, in all walks of life, in all organisations from judiciary down to the ordinary man in the street, of their rights and privileges. Even that atrocious Proclamation of Emergency was subsequently placed in Parliament and got approved by Parliament. And when

the people were speaking against the emergency, the ruling party at the Centre in those days boasted that the emergency was proclaimed with the approval of Parliament. But we knew that even in those days what the Members of Parliament had stated inside Parliament, inside the House, could not be published outside because of certain emergency provisions. We know what will be the fate of this Bill. As Mr. Advani has stated, the Government was waiting till the last date on which the Rajya Sabha was adjourned. And an Ordinance was issued. After three months, they have come with the Bill to replace that Ordinance to make it a *fait accompli*. So, after giving this right to Parliament, as Mr. Chidambaram has stated, we know what will happen, and what happened in 1975 when Proclamation of Emergency was got approved by Parliament. Because we know that they have got—what should I say! shall I say brute majority or the dump majority or the obsequious majority, I do not know which word our Harvard-returned Minister will like. So, Mr. Deputy Chairman, naturally, I would say that this piece of legislation even if I say is an affront to Parliament or an outrageous act on Parliament or marching order on Parliament to the burial ground, it will be mild to describe exact reaction to it.

Our Minister of State for Home Affairs has stated that with the passing of every day, man grows wiser and so, what the Government had done in the year 1971, now they want to update by bringing a fresh Bill. But you are aware of the history or the background and even our Minister is also aware; he has stated it and willy-nilly admitted that the mother Act was passed in 1952, and the amending provision—which means the right or obligation on the part of Government to lay on the Table of Parliament the report of any Commission within six months of its receipt—was incorporated in the mother Act in the year 1971, and now it is 1986. They propose to go back where it was prior to 1971. He has used the word 'update'. So long, we are told of the present Government's lineage; grandfather, mother, son—or the grandson. This was the lineage; Pandit Jawaharlal Nehru, Mrs. Indira Gandhi and Mr. Rajiv Gandhi. This is the lineage. Eeverytime we are reminded of this lineage.

SHRI P. CHIDAMBARAM: Is it relevant?

THE MINISTER OF STATE IN THE DEPARTMENT OF CIVIL AVIATION (SHRI JAGDISH TYTLER): You name one family that has contributed to the freedom struggle of the country.

SHRI DIPEN GHOSH: Yes, I am reverting to your subject.

SHRI ATAL BIHARI VAJPAYEE (Madhya Pradesh): There are families who did not get anything in return and who sacrificed all their members in the freedom struggle. What are you talking?

SHRI JAGDISH TYTLER: Mr. Vajpayee, we also know your role in the freedom struggle.

SHRI DIPEN GHOSH: So far as I know, Mr. Tytler was born after Independence. So he knew little of history of Independence.

SHRI RAOOF VALIULLAH (Gujarat): What about BJP's role?

SHRI DIPEN GHOSH: You need not say about BJP's role or your role.

SHRI P. N. SUKUL (Uttar Pradesh): What was the role of the Communist Party?

SHRI DIPEN GHOSH: Sir, Mr. Tytler was born after Independence. So he knew only those three persons. That is right. I give him the benefit of ignorance of the pre-independence history. Sir, what I am saying is, during grandfather's time, the Commissions of Inquiry Act was passed, in 1952. (*Interruptions*)

SHRI PAWAN KUMAR BANSAL (Punjab): Why do you say like that?

SHRI DIPEN GHOSH: When Pandit Jawaharlal Nehru was the Prime Minister, the Commissions of Inquiry Act, 1952,

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was passed. I quote what the then Home Minister, Dr. Kailash Nath Katju, said when piloting the Bill in the Lok Sabha:

> "Government is not going to appoint Committees and Commissions every day as a matter of amusement. Committees and Commissions are appointed rarely for matters of great public importance, whenever there is a great demand or when there is some sort of a scandal in respect of an industry or, as one hon. friend referred to here, for the promotion of some legislation, or to enquire into some deepseated evil and so on, where information is required."

This was the statement made by Dr. Kailash Nath Katju, as Home Minister, while commending the Bill, the Commissions of Inquiry Bill for adoption. Then, during Mrs. Indira Gandhi's time, in 1971, a new provision was sought to be incorporated. At that time, Shri Ram Niwas Mirdha, as Minister of State for Home Affairs, who is still in the Cabinet now, said this: I am not going to quote the Joint Select Committee which Mr. Advani has quoted because Mr. Chidambaram has said that with the passing of every day, man grows wiser; therefore, one needs updating. Sir, Shri Ram Niwas Mirdha said at that time.

SHRI P. CHIDAMBARAM: I can only speak for our side. I cannot speak for the Opposition.

SHRI DIPEN GOSH: Shri Mirdha said:

> "It is exactly to meet a situation where Government's appoint Commissions and take no action on them that this provision has been made that within six months of the presentation of the report, Governments are bound to bring it before the Legislature along with the manner in which they propose to implement it."

I do not know whether, when the decision was taken in the Cabinet to update the Commissions of Inquiry Act, Shri Ram Niwas Mirdha was present in the meeting, and agreed to the updating of this Act. But it is not updating. At least, this is not the proper English word. I am not so much at home in English as the Harvard-returned Mr. Chidambaram is. However, it is not updating. It is backdating; because, you are nodding your head, is it in the Tamil fashion or some other fashion...

SHRI CHITTA BASU (West Bengal): What is that Tamil fashion?

SHRI P. CHIDAMBARAM: I am shaking my head vigorously. When you use the word 'backdating', it is both wrong English and wrong law.

SHRI DIPEN GHOSH: I have got the clue from your statement. He said, he wanted to give Parliament the right to decide what is to be disclosed and what is to be suppressed. He will say, it is updating. In the earlier provision, it was not like that. In the earlier provision, it was binding, it was obligatory on the part of the Government. Now, Government wants to make it non obligatory. An obligatory action, when it is made non-obligatory, I do not know, whether, from the point of view of intention also, can it be called updating. It is in fact backdating. The question is whether the Parliament will be allowed to retain its inherent right to information. That is the whole question I know there are so many legal stalwarts here, they will be speaking after me. Shri Madan Bhatia, my learned colleague, is already equipping himself. Other learned colleagues are also there and that way I know nothing of law as Mr. Chidambaram has stated, but at least I know that everything legal is not legitimate. (*Interruption*). So, naturally the question arises whether by this Bill, when enacted, the Parliament will be allowed to retain its inherent right to information. If that right is taken away, what else remains in a system of parliamentary democracy, that is the question. There are our neighbouring countries. There is Bangladesh, there is Pakistan, there is Nepal, Thailand and Indonesia and we are told that India is

different from these neighbouring countries. We are told so because we have a free parliamentary system, having a system of holding elections at regular intervals, we have a rule of law, we have an open system of government where facts, even those which are not convenient to the administration, are laid on the Table, and we have a judiciary whose directions are followed to the letter. Now this Ordinance and for that matter this Bill to replace that Ordinance is a slap on the face of such assumption. In fact with the passing of this Bill it takes away the luster and renders us run-of-the mill just as in the crowd of Bangladesh Nepal, Indonesia, Thailand and Pakistan. Now the Government, after passing this Bill, would proclaim to the world, don't worry the Government here at the slightest difficulty would cut corner, twist the law and violate the principles of open administration.

The question now is, what is sought to be achieved by updating this Commissions of Inquiry Act? I use the word 'updating'. Mr. Chidambaram has stated that in an unprecedent situation, this unprecedented step has to be taken. And obviously one can assume that this unprecedented step was sought to be taken in order to suppress the publication of the report of Thakkar Commission which was asked to go into the details about the assassination of Mrs. Indira Gandhi.

MR. DEPUTY CHAIRMAN: Please conclude now.

SHRI DIPEN GHOSH: In two minutes I am concluding. Sir, Mr. Advani has quoted something from India Today. I am not going to quote that thing. If we suppress this report, good, bad or indefferent, whatever the report may contain by doing that what do you want to achieve? Do you want to achieve the same result which we sought to achieve while and when this Commission was constituted? This is my question. Why then was the Commission constituted? What was the necessity? What was the compulsion of the situation to constitute such a commission? The compulsion was to unearth the truth. We have been saying—I said from this side standing here from this position and still I believe—my party believes—that there was a foreign hand behind the assassination of Mrs. Gandhi. "India Today" has taken a stand from another point of view. Somebody was alleging that the real assassin was in Mrs. Gandhi's kitchen. I say the real plot of assassination was hatched in the headquarters of CIA.

MR. DEPUTY CHAIRMAN: Your two minutes are over now.

SHRI DIPEN GHOSH: I am going to the point, Sir. Naturally, if the purpose of constituting a commission was to unearth the truth, that requires also to tell the people the truth and to mobilise the people against those forces which were behind the assassination. By suppressing the truth from the public, you may satisfy yourself, some Minister, some Secretaries, some executives may satisfy themselves with the findings of that Commission, those who had got the opportunity to go through it, but the purpose of constituting that Commission was to unearth the truth and to tell that truth to the people so what they can mobilise themselves against those forces so that such a thing does not recur....Sir, I am going to conclude. Sir, therefore, in fact I accuse that by suppressing the report of Thakkar Commission, the Government is protecting the people who are behind these machinations to destabilise the country by killing our Prime Minister, the Government is protecting them by not allowing the masses to be mobilised against those forces. It is not simply a question of legality; it is a question of the country's sovereignty, integrity and unity. By killing Mrs. Gandhi, there was a conspiracy to destabilise our country, and also, following the assassination, by creating riots for which another commission—Ranganath Mishra Commission—has been set up. And you are going to suppress this report too. Mr. Advani has cited one example by quoting from "India Today" that the people in authority were responsible for engineering such riots. I accuse—from here I accused also the other day when Mr. Buta Singh had agreed with me—that there were

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foreign hands, foreign conspiracy behind the engineering of these riots because in every city, every town, if people of a particular community consider themselves unsafe, the people fleeing from that place to their original home place and telling the other people that they were unsafe in those areas, that makes the Khalistan demand gain ground objectively. So, the conspiracy was deeper. Naturally, if the Ranganath Mishra Commission was set up to unearth the truth and to unmask the forces behind this creation, then it requires, it demands of the Government to tell the truth to the people and mobilise the people against those forces. If you suppress it you stand accused of siding with those conspirators. Not only are you denuding Parliament of its right and privilege, but you are also denuding the right of the people to mobilize, the right of the people to say against those heinous conspiracies and crimes, and you are abetting those conspiracies.

Thank you, Sir.

SHRI MADAN BHATIA (Nominated): Respected Deputy Chairman, I have listened to the speeches of the honourable Members on this side. When law is divorced from politics, confusion is bound to ensue. What is law? Law is the codified expression of the will of the people, and when I analyze the speeches of the honourable Members on this side I feel that it is not the Bill which the honourable Members have been discussing. It is as if the Government has issued a notification withholding the publication of the Thakkar Commission report and has come before Parliament for approval of that notification. Nothing is really being said about the Bill which today is the subject-matter of debate.

Honourable Member, Mr. Advani, traced the history of the existing provision which provides that the report of a commission of inquiry shall be laid before the House of the People. I respectfully submit, Sir, the history which the honourable Member has traced is not only incomplete but also inaccurate. When the 1952 Act was passed, this provision was not there. In 1971 when the Amendment Bill was brought forth before Parliament, even in the Amendment Bill such a provision was not there. The Bill was referred to a Joint Committee and the Joint Committee examined various witnesses. One of the witnesses who appeared before the Joint Committee was Mr. Palkhivala. In the course of his testimony in fact, at the end of his testimony, a question was put to Mr. Palkhivala by Mr. Balraj Madhok who was a member of that Committee. He said, what do you say when the reports of the commissions of Inquiry are received by the Government and they are not published for a long time? In a few sentences Mr. Palkhivala replied, "Yes, it is most essential in public interest; that these reports must be published and a provision should be made in the Bill making it mandatory for the Government to place the report of the commission before the House of the People." After making this statement his testimony ended and Mr. Palkhivala went away.

The report was written by the 3.00 P.M. joint committee. I submit with great respect to the hon. Members of the Joint Committee that the suggestion which fell from Mr. Palkhivala was accepted and reproduced in the report with uncritical acceptance. Mr. Palkhivala had highlighted one aspect of the public interest, namely, it is in public interest that the reports of the commissions of inquiry should be published.

Neither Mr. Palkhivala nor any member of the Joint Committee addressed himself to the second aspect of the public interest. Whenever the question of publication of a document relating to the affairs of the State arises, there are always two kinds of public interest. I respectfully submit, Sir, the Supreme Court, our Supreme Court in 1975 while discussing the question of the privilege of publication of various documents highlighted these two kinds of public interest in these words:

"There are two kinds of public interest to be considered by the Court, and they are:

(1) the public interest that harm shall not be done to the nation or the public service by publication of a document; and

(2) the public interest that truth shall be discovered and the administration of justice shall not be frustrated by the withholding of the document".

The Supreme Court said that whether a particular document relating to the affairs of the state should be published or should not be published has to be decided on the balancing of these two factors. Not one factor can prevail over the other. I respectfully submit, Sir, law has a strange way of taking its own course. Almost immediately after this Bill became an Act, the question arose before the Thakru Commission. The Thakru Commission was appointed to look into certain matters by the Central Government. The Thakru Commission called for various documents from the Central Government. The Central Government pleaded that disclosure of those documents before the Commission of Inquiry would be contrary to public interest. The Commission gave a ruling and said:

"If there is a conflict between the functions of the Commission which enjoins upon the Commission to discover the truth and the interests of the state to withhold the document, then, the interest of the Commission shall prevail."

This ruling was given. The Union of India challenged this ruling before the High Court. Lo and behold, Mr. Palkhivala was engaged to argue on behalf of the Union of India before the High Court. And Mr. Palkhivala then for the first time became aware that even so far as the commissions of inquiry were concerned, they were also governed by that well-known legal principle which is called "salus populi est suprema lex", meaning thereby, welfare of the people is the supreme law. He argued that if disclosure of cerain documens in the course of the proceedings before the Commission is likely to cause injury to public interest, those documents, the Commission ought not to insist on disclosure, and those documents the Government should be allowed to claim privilege for. And he invoked this principle which I repeat, "salus populi est suprema lex." The High Court upheld his contention and upheld this particular principle of law as equally applicable to the proceedings before the commissions of inquiry. The High Court said:

"It is indeed essential that the said principle should be made applicable to the proceedings before the Commission which is equally concerned with avoidance of injury to public interest or welfare."

I respectfully submit, Sir, if the Government withhold documents relating to the affairs of the State in public interest in the course of the proceedings before the commissions of inquiry, then, in certain circumstances, the report of the commission of inquiry can also acquire that status and that privilge. In what cumstances I will put it to myself. Can this happen? Before I deal with that, I will submit, Sir, that the Supreme Court while dealing with the question of the privilege of documents held that there are certain kinds of documents which belong to a particular class with *per se* their privilege and their disclosure would be injurious to the public interest. What are those documents? Those documents are: Cabinet papers documents relating to the affairs of the security of the State, foreign office despatches and high level inter-departmental communications. Then the Supreme Court said that even if a document does not fall in any of these clauses, still it can claim privilege from the disclosure of these documents that are contrary to the public interest.

Sir, I wish to quote the proceedings from the House of Lords which were quoted by the Supreme Court while approving a judgement:

"I don't doubt that it is proper to prevent the use of any documents wherever it comes from if disclosure of its contents would really inquire the national interest."

Now these words are important "wherever it comes from". If the disclousre of a particular document will injure the

[Shri Madan Bhatia]

national interest then that document cannot be permitted to be disclosed to the public, because it is in the public interest not to disclose that particular document.

Now, Sir, the Commission of Inquiry is appointed by the Government under the Act. Under the Act it is not required that the Commission shall be appointed only on public demand. One speech was read out by an hon. Member and some Member said when this Bill came up for consideration first time that on public demand the Commission of Inquiry are appointed. This I respectfully submit, Sir, is misreading of the Act. Apart from a Resolution of the Parliament, if the Government considers it necessary so to do the Government may appoint a Commission of Inquiry if it is keen to discover the truth particularly affairs relating to the matters of the State. The Government appoints a Commission of Inquiry and says that they want the Commission to discover the truth. We claim no privilege with regard to any document—whether it relates to the security of the State or whether it relates to the Cabinet minutes or whether it relates to the high inter-departmental proceedings. We shall place all the documents and the material before you. You please let us know the truth and the Commission goes through all the material and the documents and gives the report. By necessity report is bound to deal with these particular documents which *per se* belong to a class. The disclosure would be injurious to public interest. If that be so, then the public interest which attaches to the secrecy of these documents will automatically get transferred to the report of the Commission of Inquiry, because the report is dealing with those very documents for the purpose of discovering the truth. The Government claims no privilege. It is not the stand of the Government that by disclosing these documents to the public at large the public interest shall not be injured. In that circumstance, I respectfully submit, Sir, that this privilege and protection from disclosure stands transferred to the report of the Commission of Inquiry.

In another circumstance also the report of the Commission of Inquiry would need protection when the findings of the Commission of Inquiry are such that they have a bearing on the security of the State, they have a bearing on the relations with foerign countries, they have a bearing on the operation, the mechanism and the entire working of the highest intelligence agencies of the country. Will it be in public interest to disclose the findings of the report of such a Commission of Inquiry when this report is impinging on these prohibited areas. I respectfully submit, Sir, nothing can be more injurious to public interest than to make public the contents of the report of such a Commissions of Inquiry. Then, Sir, I submit, what does this Bill do? This amendment, I respectfully submit, Sir, seeks to remove the conflict between the existing law which makes it obligatory for the Government to place the report before the Parliament and the fundamental principle of law namely that the disclosure of documents shall cause no injury to the public interest. The welfare of the people is the supreme law. This conflict is sought to be removed by this proposed amendment. This proposed amendment seeks to reconcile the two facets of public interest relating to the disclosure or nondisclosure of documents but the most remarkable future of this Bill is that the executive has not been made the ultimate repository of the decision as to whether the report shall be made public or shall not be made public In regard to all other documents in this country and I would later on submit in regard to all other secret documents in other democratic countries, it is the executive which has been made the ultimate arbiter to decide whether a particular document should be published or should not be published. But the remarkable feature of this power does not vest in the is that this power does not vest in the executive. It provides the executive will take the decision, in the first instance will issue a notification to that effect and then shall seek the approval of that notification by means of a resolution which will be brought before the Parliament. Parliament is the ultimate arbiter to decide, whether the report should be withhold in public interest in the interest of the

security of the State, in the interest of good relations with foreign countries, in the interest of the integrity of the country and so on. I respectfully submit, Sir, and my learned friend says, how can the Parliament say? The whole observation shows colossal ignorance of functioning of parliamentary democracy, how does Parliament function, what are the powers of Parliament. The powers of Parliament are uninhibited anl uncontrolled right to discuss matters which come before the Parliament, there is no limit on this right. (*Interruptions*).

Mr. Babul Reddy, I have not disturbed you. Now, you have the patience and listen to what I say.

SHRI P. BABUL REDDY (Andhra Pradesh): Mr. Bhatia, we are to approve withholding is in public interest without knowing what was withheld. It is a futile exercise. You must know Parliament working better.

SHRI MADAN BHATIA: When the resolution comes before the House, Parliament right is to decide, is to discuss. When the resolution comes, it is for each and every Member of the House to express his opinion that this report is of such a kind, of such a character relating to such matters that it must be disclosed and should not be withheld. (*Interruption*).

SOME HON'BLE MEMBERS: Without knowing the report ...

SHRI MADAN BHATIA: Now, the hon. Members say, how can we argue like this? This is a remarkable argument. They say how can we say that this particular document will impinge upon the defence of India unless we know what this document is? So, disclose all the documents relating to the defence of India today. (*Interruption*) So, this is their logic. Their logic is: first disclose the document to us and we shall see, we shall read through the document and leak out to the press and in the Parliament, we shall say: now, you need not disclose because we have come to know this document. This is the argument which is being addressed. (*Interruptions*)

MR. DEPUTY CHAIRMAN: Let him speak.

SHRI MADAN BHATIA: This is the kind of argument which is being addressed, that Members of the House will decide, by looking into the document, by reading the document, by having the right to disclose the contents of this document that this document should be disclosed or should not be disclosed.

SHRI A. G. KULKARNI: What else can be done? Suppose we are to discuss ...

MR. DEPUTY CHAIRMAN: You address the Chair.

SHRI A. G. KULKARNI: Sir, with your permission, I am asking a question. I want to know one thing from Mr Bhatia. He is making some observations which are weighty observations. He is a learned person. He is himself a jurist and he knows what he is talking. He says we are talking funnily. But I really feel that what he is arguing is the funniest argument, that without knowing what we are discussing, we should vote for it. That means the majority roller will roll over the country and the country will not know anything. Our basic objections is in regard to the right of information.

SHRI MADAN BHATIA: I will deal with this. (*Interruptions*)

SHRI KAMALENDU BHATTACHARJEE (Assam): I am on a point of order. Respected Kulkarniji started with a confidential chat with Mr. Bhatia. Is that permissible?

MR. DEPUTY CHAIRMAN: That is why I said that he should address the Chair.

SHRI MADAN BHATIA: The hon. Member says, what is there to discuss? The discussion is provided by the contents of the Bill itself. There is no uninhibited right with the Government to withhold publication of the report. The report can be withheld from publication only when it is in the interest of the sovereignty and integrity of India, the security of the State, friendly relations ... (*Interruptions*)

SHRI DIPEN GHOSH: Who will decide?

SHRI MADAN BHATIA: Will you please allow me to speak? I respectfully submit: take this particular commission of inquiry.

SHRI N. E. BALARAM: He is actually arguing for the Opposition.

MR. DEPUTY CHAIRMAN: Don't interrupt him. Let him have his say.

SHRI NIRMAL CHATTERJEE: He is confused enough.

SHRI MADAN BHATIA: The very terms of reference of the commission of inquiry are such that, *per se*, the report of this particular commission falls into the category of prohibited documents. If you look at the terms of reference, to which no reference has been made by hon. Members—hon. Members say there is nothing to discuss; look at the terms of reference of this commission of inquiry—the commission was enjoined to discover matters relating to the security of the Prime Minister. The security of the Prime Minister is co-terminous with the security of the State. (*Interruptions*).

MR. DEPUTY CHAIRMAN: Order, order.

SHRI M. S. GURUPADASWAMY (Karnataka): What a wonderful theory!

SHRI N. E. BALARAM: Sir, bigger discoveries are being made. Please allow him.

SHRI MADAN BHATIA: This argument that unless we look at the documents, we cannot say whether it should be disclosed or it should not be disclosed is a perennial argument, which has been raised before the courts in the last 100 years. Whenever a document's privilege has been claimed by the Government, the question was whether the Government's claim of privilege should be allowed on reading of the document by the court or without reading of the document by the court. And the Supreme Court has held that there are certain kinds of documents which belong to a class that, per se, they are privileged, and there is no question of the court reading those documents at all. And in other cases, the court has the power to call for affidavits from the Government stating the reasons why the privilege is being claimed. The court has the power to adjudicate upon the reasons as to why the privilege is being claimed. The resolution which comes before the House gives ample opportunity to the Members of Parliament to discuss the reasons on the basis of which the Government claims that this particular report should not be published. All that has happened is that 'court' has been replaced by 'Parliament' because there is no judicial dispute with regard to Publication of a report of a commission of inquiry. When there is no judicial dispute, who is to decide and in what manner it is to be decided as to whether a report should be published or should not be published, the House will see on the basis of the terms of reference whether this particular document belongs to the class of prohibited documents or not. If on the terms of reference it is shown that it belongs to a prohibited class, then the Government is fully justified without giving any reasons that the publication of this particular report will be contrary to public interest. If the terms of reference give no indication, then the Government will be enjoined upon to give reasons why this particular document should not be published. Those reasons will be the subject-matter of debate in the House. When the honourable Members say there is nothing for us to discuss when the report is not disclosed it is putting the cart before the hors. The reasons which are to be given by the Government will be justiciable and will be subject-matter of debate before the House. The Government has to come forward and convince Parliament that ther are cogent reasons why the report should not be published. That is the whole object of the resolution. The reasons are going to be the subject-matter of debate and not the document itself. If the document has to become the subject-matter of debate, then this Bill is as good meaning less.

SHRI DIPEN GHOSH: Without going through the petition and counter-petition you are giving an argument...

SHRI MADAN BHATIA : If the honourable Member happens to be a trade unionist, he must be appearing before courts of law and if this is the line of argument he is going to put up in courts of law, then he must have lost all his cases...

SHRI DIPEN GHOSH: Without reading the affidavit and the counter-affidavit you are arguing a case.

SHRI MADAN BHATIA: It is no wonder to me that the honourable Member has probably withdrawn from the legal battles and has shifted his battles to the House where he can say anything and every thing.....

SHRI DIPEN GHOSH: Anything legal is not legitimate.

SHRI MADAN BHATIA: Honourable Members have referred to the right of information that every citizen has a right of information. The honourable Mr. Advani made three statements. In the first breath he said the right to know is the fundamental right of every citizen. In the second breath he said that the right of access to this particular report has been conferred upon Parliament by the statute. If this is a fundamental right of a citizen-the right of access to a report of a commission—the question of conferring this right by an ordinary statute on Parliament does not arise. The two statements are contradictory. And in the third breath the honourable Advaniji said the right to information is being conferred by various democracies on their citizens by means of various statutes and Acts. A fundamental right is a basic right, a basic human right. It is a right either enshrined in the Constitution or it is recognised as a basic human right which is infalliable and whch cannot be cut down and truncated by any statute. If the right to know and the right to inforamtion in regard to Government documents is a fundamental right or a basic human right, the question of conferal of this right upon the people of various democracies by ordinary statutes does not arise. It is because this right is not a fundamental right that satues have been passed regulating the right of access of citizens to various public documents. In the United States, the freedom of Information Act was passed. It was under this Act that provisions were made about the circumstances under which public documents could be made available to the citizens. And Sir, provisions were also made regulating the procedure by which this right was to be adjudicated upon. Take, for instance, England. But, before I go to England, I would like to say that this Freedom of Information Act also excludes two particular kinds of documents of that class

AN HON. MEMBER: You are talking about England now? (*Interruptions*).

SHRI MADAN BHATIA: You started talking about other democracies: I have not. (*Interruptions*). You started talking about other democracies and now I am talking about England. What is wrong? (*Interruptions*). Sir, they were citing the American jurisprudence. Sir, they talk of other democracies as if the other democracies only are functioning more democratically, in a more democratic manner, than the Indian democracy. They have not cited their own democracy, but they always talk of other democracies only. So, I can take them on their own field.

Now, Sir, this Freedom of Information Act has been passed in the United States. (*Interruptions*).

MR. DEPUTY CHAIRMAN: No interruptions, please. Please do not disturb him.

SHRI P. BABUL REDDY: Mr. Bhatia, before the American court it was pleaded that the American courts were better than the Indian court. (*Interruptions*).

You pleased if. (*Interruptions*).

SHRI MADAN BHATIA: Sir, I do not deal with irrelevant interruptions. (*Interruptions*).

SHRI DIPEN GHOSH: You had to go the American courts in respect of the paal gas tragedy case. (*Interruptions*).

SHRI MADAM BHATIA: Sir, the American Supreme Court, in the Mint-Case, decided that the decision of the executive as to whether a particular document should be disclosed or should not be disclosed is unreviewable even if it is malafide or arbitrary. See the contrast between the law of the United States aand this particular provision. This particular provision says that the executive is not the final arbiter, but Parliament is the final arbiter, and it is enjoined upon the executive to give the reasons for non-disclosure of a document and Parliament is to decide. Sir, when they talk of Parliament, Member on this side, probably only think that the handful of Members sitting on this side constitute Parliament and the rest of the Members do not constitute Parliament. I would respectfully submit, Sir, that there is no Parliament of parliamentary de- mocracy where decisions are not taken by a majority. If the decision of the majority is to be treated as a decision amounting to driving the coach and the horses through the parliamentary traditions, then I do not know what those traditions are. Sir, the honourable Members were also speaking of other democracies apart from the US democracy and I suppose they meant Great Britain also, the mother of democracy, according to them otherwise, I suppose they do not treat this country as a democracy in the present set-up. Sir, there was a Minister, Richard Crossman. He was a Minister in the Labour Cabinet in the early sixties. He used to keep a diary of all the matters and affairs relating to the State. Then he ceased to be a Minister; he died. Eleven years after he had completed his diary, his heirs gave the diary to the publishers for publication. The Attorney-General of Encland filed a suit against the publishers seeking an injuncition to restrain them from publishing this diary. The ground was confidentiality relating to the viewpoints of the State and that the publication of his diary would be injurious to public interest. The House of Lords adjudicated on this and held that whenever the question relating to the publication of matters relating to the affairs of the State arose . . .

SHRI ALADI ARUNA alias V. ARUNACHALAM (Tamil Nadu): Sir, Crossman's diary dealt with Cabinet meters and the Cabinet proceedings. It was against the Official Secrets Act.

SHRI MADAN BHATIA: No. It dealt with other matters also. (*Interruptions*). It did not deal with Cabinet matters alone. It dealt with other matters also You go and read that diary.

SHRI ALADI ARUNA alias V. ARUNACHALAM: I know it. (*Isterruptions*).

SHRI A. G. KULKARNI: Mr. Aruna, the diary might contain details about aappointments with other persons and ladies also. (*Interruptions*).

SHRI MADAN BHATIA: There has to be a balancet between the two kinds of public interests. Whenever a public document is required to be published, the two kinds of public interests must be balanced. Even the Constitution of India recognises the principl eof secrecy relaing to various affairs of the State. What is Artice 74 of the Constitution? It provides that the question as to what advice i given by the Council of Ministers to the President shall not be called in question is any court. All those matters relating to the advice given to the President are privilged and are prvilged from disclosure before any court of law. Take the oath of secretary. (*Time bell rings*). I plead only for 3 or 4 minutes. Take the oath of secrecy. A Minister is enjoined to take the oath of secrecy that he shall not reveal any communication or any information which comes to his knowledge during the course of his acting as a Minister. This oath of secrecy is not related to Cabinet documents. This oath of secrecy relates to all matters concerning the affairs of the State.

The hon. Members on this side have raised the question of Emergency. I respectfully submit, Sir, that when the hon. Membeds are attacking us or his parii cular Bill with regard to the maintenance of secrecy, I really don't expect that they would show any regard for secrecy,

if their political interests are served. This oath of secrecy came up for consideration in the Shaw Commission case when Mrs. Gandhi's prosecution was ordered by the Shaw Commission. Mrs. Gandhi was summoned by the Shaw Commission. Mrs. Gandhi said: "You cannot question me and ask me questions which will be covered by my oath of secrecy because by oath of secrecy I am enjoined not to disclose those matters". Justice Shaw had already armed himself with an advise from the Government of India. The Government of India and Justice Shaw both were aware that by virtue of oath of secrecy, she could not be questioned on certain matters. An opinion was obtained behind the back of Mrs. Gandhi by the Government of India and the Government of India said that they waive this privilege of oath of secrecy. It is their privilege and not her obligation. So, you can go ahead with questioning her. When Mrs. Gandhi pleaded the oath of secrecy, Justice Shaw rejected that plea and odered her prosecution when she challenged her prosecution this is what the court said and I want to draw your attention o it:

"In my opinion, the opinion of the Law Minister was outrageously wrong. Its superficiality is stunning. The learned men in the Law Ministry looked only at the Official Secrets Act and the Indian Evidence Act. Their eyes never lifted towards the Constitution at all. Not one single Article of the Constitution is mentioned. No one seems to have opened a book on Consitutional law to find out the reason for the oath. To them, the fundamental principle of collective responsibility, so vital for the existence of the Cabinet system, was unknown. I suppose, to expect them to consult the Debates of the Constituent Assembly would be asking for far too much".

The High Court held:

"The Constitution is the highest law in this land. All other laws spring from it. The Constitution extracts the oath of secrecy from a Minister before the him self may enter upon his office."

The judgement goes on to say:

"Even I, as a court, cannot call upon a former Minister to breach his oath of secrecy. If I do so, I shall be committing a breach of my oath of office under which it is enjoined upon me to uphold the Constitution."

Was it for the purpose of discovering the truth that all this drama was enacted? The answer is contained in this Judgement itself. And there was Mrs. Indira Gandhi who earlier received a letter that you come and give a statement in the winess box. She said, you must give me the right of cross-examination, you must respect my oah of secrecy. A second leter was again sent. And Mrs. Gandhi repeated and said—I am referring to this Sir, I had the privilege to argue this case for four months. I was on my legs from 11th January, 1979 till the 1st week of May and then the lst week of September, This was the statement of Mfs. Gandhi:

"I should like to make another submission to this Hon'ble Commission. So far it has been understood that neither the Prime Minister, the Home Minister nor any other functionary of the Government had the right or jurisdiction to hold parleys with such Commissions in regard to any matter pertaining to inquiries pending before them. However, on October 20, 1977 the present Union Home Minister announced at a press conference that he and the Home Secretary had met this Hon'ble Commission and had discussed matters relating to the scope of the inquiry. He said, 'you will be surprised to know that I and Home Secretary had a talk with Mr. justice Shah more than two months ago 'There are also reports of meetings before between the Prime Minister and the Hon'ble Commision."

Then, Sir, the High Court observes:

"In passing, it may be observed that the Chairman does not refute the allegation of Mrs. Gandhi that he has held parleys with the Home Minister, the Home Secretary and reportedly. the Prime Minister, and discusseed matters relating to the scope of the inquiry."

[Shri Madan Bhatia]

And the finding is:

"It is difficult to repel Mr. Bhatia's submission that the main object of the Commission was to somehow bring Mrs. Gandhi into the witness box and subject her to cross-examination."

Sir, here are the gentlemen; who, when they were in power, trampled the constitutional oath of secrecy. They destroyed it, they truncated it.... (*Interruptions*). because it suited their nefarious purpose of vilifying Mrs. Gandhi in the witness box. Today it suits their political purpose of insisting upon the publication of this Commission of Inquiry report. But when it came to the matters of secrecy, they were fully aware of it and they put it to extremely bad misuse. They spoke untruth to the nation that Mr. Moshe Dayan, the Defence Minister of Israel was not their guest. When they were caught on their untruth, they had to divulge the truth that Moshe Dayan had been their guest. This is their respect for the oath of secreecy, and this is the manner in which they have been using the weapon on secrecy against the people of this country.

The people of the country had the right to know that Moshe Dayan had visited the country Why did they speak the using the weapon of secrecy against the We are not the final arbiter. You will decide. You will have all the reasons before you when the notification is made and the Resolution is placed before you. That will be the occasion for you to come forward with your political fulminations against the withholding of the reports, and not this Bill on which you have not had even a word to say.

MR. DEPUTY CHAIRMAN: There are several Members to speak and I request the hon. Members to stick to the time schedule.. (*Interruptions*). Now Shri Aladi Aruna, 12 minutes are allotted for your Party.

SHRI ALADI ARLNA alias V. ARUNACHALAM : How is it, Sir? He has taken more than 45 minutes.... (*Interruption*).

SHRI NIRMAL CHATTERJEE (West Bengal) : It can continue tomorrow.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Mr. Deputy Chairman, Sir, I extend our support to the Resolution moved by hon. Mr. Advani and the leaders of other political parties for the disapproval of the Commissions of Inquiry Ordinance, 1986...

SHRI LAL K. ADVANI: Thank you, Mr. Aruna. You made history today.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM.. pomulgated by our President on the 14th May, 1986 and register our protest to the Bill to amend the Commissions of Inquiry Act, 1952, as passed by the Lok Sabha.

Sir, the Ordinance promulgated by our President just one day after the adjournment of the Rajya Sabha clearly reveals not only how the party in power at the Centre has scant and rank respect towards Parliament but also how article 123 of the Constitution, which was intended to be used in exceptional circumstances has been misused by the Government. Sir, the amendment Bill moved by the hon. Minister is unwarranted and undemocratic. It is a representive measure against the propriety of Parliament and privilege of hon. Members. I oppose both the Ordinance promulgated on May 14, as well as article 123 of our Constitution wherein President of India is vested with power when he is statisfied that circumstances exist which render it necessary for him to take immediate action. Sir, there are two objectionable ingredients in this article. During the British rule the Governor General was vested with power of ordinance, but in the case of emergency only. But here to promulgate that ordinance there is no need of that emergency. The satisfaction of the President is enough to exercise such power under article 123. Satisfaction of the President we know is the satisfaction of the Government and the satisfaction of the Government means the satisfaction of the Party in Power.

Sir, another dangerous element in the article is that satisfaction of the President cannot be questioned in a court of law. It is final. It is unquestionable and hence I oppose this article. Secondly, the question arises whether it is possible to

run the Government without a power of Ordinance? My reply to this question is it is possible and desirable. Sir, no head of a State in any democratic country is vested with such a power, neither the President of the United States, nor the Queen of the United Kingdom, they are not vested with such a power. Parliament is the only competent authority to enact the law, not any other agency. Sir, since 1950...

SHRI THANGABALU (Tamil Nadu): That is what we are telling (*Interruptions*).

SHRI ALADI ARDNA *alias* V. ARUNACHALAM: He has every right to intervene and I am prepared to answer. Sir, from 1950 the Government of India has proclaimed more than 350 Ordinances. It means more than 350 times this Government has bypassed the Parliament, more than 350 times it has suppressed the right of Parliament, more than 350 times it has deprived the right of the Members. Above all more than 350 times it has been afraid of facing the scrutiny of Parliament. Sir, owing to the incorporation of the article in our Constitution, the rules themselves have developed their style of functioning without respecting the Parliament, had it not been incorporated in our Constitution.

SHRI THINDIVANAM K. RAMAMURTHY (Nominated): Does it apply to the undemocratic government in Tamil Nadu? Proclamation of ordinances—does it not apply to the Anna D.M.K., Government in Tamil Nadu? Are they not doing it?

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Yes, this is applicable everywhere.

SHRI THINDIVANAM K. RAMAMURTHY: You are supporting an undemocratic Government

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: It is the most democratic Government that we have in the States. Had it not been incorporated in the Constitution, our rules would have developed the character of art of Government and administrative capacity with foresight and perspective. Among the political leaders who bypassed Parliament very often is General de Gaulle, the then President of French Republic. According to political scientists in France, de Gaulle ruled France not by Parliament but through Parliament. So, our Government also is trying to follow the footsteps of General de Gaulle to rule the country not by Parliament but through Parliament.

If you go through the history of proclamation of Ordinances, we find that in the first instance, the power of Ordinance had been assigned to the Governor General under section 49 of Charter Act of 1833. This power has been included again in section 23 of Indian Council Act of 1861. The power was quite essential to the British imperialists because they were afraid of Indian legislature. That is why everytime whenever they enacted a law...

SHRI VISHVAJIT PRITHVIJIT SINGH (Maharashtra): What are you saying? There was no legislature at that time. What Act you are referring to? There was no British legislature at that time.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Legislature not in the sense you are saying there was no popular elected legislature, I know.

SHRI VISHVAJIT PRITHVIJIT SINGH: Forget about the popular elected legislature ...(*interruptions*) Excuse me; I am putting the records straight. He is attributing democratic norms to a country which ruled us undemocratically at that point of time.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: I am not claiming that they were ruling the country democratically...(*Interruptions*).

SHRI VISHVAJIT PRITHVIJIT SINGH: You are taking side of imperialists by saying this.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: I am going to establish that you are going to fall into the footsteps of the imperialists.

[Shri Aladi Aruna *alias* V. Arunachalam]

That is why this power of Ordinance was included in the Government Act of 1935.

SHRI VISHVAJIT PRITHVIJIT SINGH: Black Act of 1935.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: That Act was strongly opposed by Congress Party during the freedom struggle, I know.

AN HON. MEMBER: Your party was supporting it.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Our party was not there. If you are referring to DMK, it was formed in 1949; if you are referring to AIADMK, it was formed in 1971. So, Sir, the Government Act of 1935 was strongly opposed by Congress Party. But at the same time, power of Ordinance was included in our Constitution. That is why during the discussions in the Constituent Assembly, Pandit Kunzru frankly stated that it is the relic of the Government of India Act and reminence of British imperial rule. These are the words used by Pandit Kunzru.

Sir, the hon. Minister has moved this Bill to amend the Commissions of Inquiry Act whereby the report of a Commission of Inquiry shall not be laid before Parliament or State Legislature, as the case may be, if the situation so warrants in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States or in public interest. The amendment, has added sub-section (5) to the Commissions of Inquiry Act.

Then, another amendment is added, which says that every notification issued under section 3 sub-section (5) shall be laid before the Parliament or the State Legislature and the appropriate Government shall seek the approval of Parliament.

The burning question is whether the report of the Commission of Inquiry should be placed before Parliament or State Legislature or not. Under the system of Parliamentary democracy, Parliament is supreme, absolute and incontrovertible. It has the right of access to the information from the executive. The executive is subordinate; it is accountable to Legislature. Parliament does not mean majority; Parliament does not mean the ruling party. The right of the individual Member of Parliament has been asserted in Parliamentary democracy. Several democratic countries in the world have made law conferring the right of freedom on ordinary citizens. Sweden was the first country which extended the right to ordinary citizens. Them followed, the United States, Australia, Denmark, Finland which granted to citizens the right of information. In England, enquiries are being held under the Tribunal of Inquiry (Evidence) Act, 1921. English law expressly provides that enquities should be help in public, it is being argled replearly here that the notification for not placing a report before the House is subject to the approval of Parliament; it is democracy. It is argued by most of the Members. In other words, the question of notification is decided by the majority in Parliament. It is not a question of majority or minority. It is a question of one of the fundamentals of de ocratid Govrenment. No doubt. Democracy is the rule by the consent of the concerned. Consent of the concerned why and for what is more important. In that case, you can say, even Hitler ruled by the consent of the concerned. In the referendum, he secured more than 90 per cent votes. This did not mean that he ruled by the consent of the concerned. Can a man kill another man with his consent? Will this Parliament pass a aw taking away the funda enta right of the people? Can this Pariament pass a aw converting democracy into monarchy? No. Within the acknowledged principle alone, Parliament is supreme, unlimited and absolute. Enquiries are ordered not

for any individual or group of people or for any coterie. Commissions are set up for going into matters of definite public importance. Enquiries are ordered for detailed enquiry by an independent authority and in the interest of the public. Therefore, when an enquiry is ordered in public interest, public must know what has happened to their evidence, exhibit and other things. No doubt, in the original Act, there was no provision for laying the reports before Parliament; or Legislatures as the case may be. But, Sir, the lacuna has been removed, the defect has been rectified, by the Joint Select Committee. The Joint Select Committee unanimously recommended that the reports should be placed before Parliament. Now, our hon. Minister has raised a question not only in this House, but in the Lok Sabha as well. He says 'When the original Act was passed, there was no provision for placing the reports before Parliament; nobody raised his voice against it; nobody criticised the Act as a draconian one; but when we are coming forward with this Bill now, you are saying this is against democracy and so on'. Here, I would like to point out one thing. Sir, our freedom fighters demanded freedom, decided on independence, in 1929, in the Amritsar Congress under the Chairmanship of Pandit Jawaharlal Nehru, but the movement for freedom started as far back as 1885. The British people did not ask the freedom fighters 'Why do you ask for freedom now; for forty-four years, you have kept quiet'. They did not ask. But here the Minister has asked 'Why do you ask for a right which you have not enjoyed from the year 1952?' Sir, I would like to say, so many Commissions have been appointed by the Centre and the States. When we go into the question of the appointment of these various Commissions, we find that the Commissions have been set up due to public pressure or political exigencies. Political motivation is also there. Therefore, partisan attitude is not ruled out. That is why, I would say, publication is necessary to preserve the principles of fair play, justice and democracy. India is a populous democracy in the world

To maintain the popularity of the Government I ask the Government to withdraw the Bill. Otherwise, the fair name of the country will be tarnished and marred by this retrograde step being taken by Government through this Bill.

With these words I conclude my speech.

MR. DEPUTY CHAIRMAN: Shrimati Jayanthi Natarajan. I think this is your maiden speech.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): Maiden speech by a maiden.

SHRIMATI JAYANTHI NATARAJAN (Tamil Nadu): Mr. Deputy Chairman, Sir, I rise to support the Bill. The Bill is entirely within the spirit and letter of the Constitution. It suffers from no legal infirmity, it does not abridge the power of Parliament. It does not whittle down the power and privilege of Parliament in any respect and these are matters which we can easily demonstrate. Further, Sir, the Bill is sought to be used only in the paramount interest of the people, in the public interest, with the sole consideration that the welfare of the people is the supreme law. In this context, I fail to see, I find it totally incomprehensible, how anybody can oppose the Bill. Sometimes, when you look at the fine print and pick at the small little details in a Bill, you tend to lose sight of the entirety of the whole scheme. In other words, you will not be able to see the wood for the trees. Sir, I have been listening to the tremendous rhetoric that has been thundering in this House. It seems to me that without looking at it dispassionately if you go into the rehtoric it sounds as if the last bastian of democracy is falling, it sounds as if the moment this Bill is passed, the civilized world will come thundering down our shoulders and the entire society will be in shambles. Sir, this is not so. If you look at the matter in a spirit of calm discussion, in a juristic objectivity and not in a spirit of inflammable politics, you will find that, after all, the Commis-

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sions of Inquiry Act is not the last bastian of democracy, it is not the sole pillar of democracy on which our country rests, it is just an Act which is a creature of this House, which is a creation of the legislature. It is a law, it is nothing more than that. It is the law that was brought on the statute book in 1952 to meet the specific needs of the people at that time. It cannot be frozen and patrified for eternity in that point of time. Sir, law has to be dynamic, law has to move with the people, it has to be alert and sennsitive to the needs of the people. Otherwise, the law will be dubious, ineffective and wholly impotent. Sir, in 1952 the Commissions of Inquiry were being appointed to enquire into specific details, into specific questions, such as agriculture or famine or educational policy or constitutional reform. At that time it was felt that those Commissions were not able to carry out their work properly because they did not have the power to summon witnesses and compel them to give evidence, to summon documents and compel them to produce documents before a Commission of Inquiry. Therefore, it was felt that it was ineffective. In the light of that problem it was felt that there was a need for a general Central law which could set up Commissions of Inquiry to enquire into any given subject at a particular point of time and as has been repeatedly pointed out, there was no provision in the original Act for the publication of the report of the Commission of Inquiry. I went through the debates of the Lok Sabha at the time when the Bill was first passed in 1952. I find that one hon. Member had made a very strong case that the Commissions of Inquiry Act should also provide for a section by which publication of the report of the Commission of Inquiry should be made mandatory. Therefore, the question was considered even in 1952 but it was not accepted and the Act was passed as it was. After 1952, with regard to various deficiencies in the working of the Commissions of Inquiry, the Law Commission was appointed in 1962 to go into the deficiencies and suggest improvements in the working of the Commissions of Inquiry Act. I may venture to say that even with respect to the Law Commission nowhere did anybody raise before the Law Commission the question that it was important or mandatory to place the report of the Commission of Inquiry before the table of the Lok Sabha. Sir, the Law Commission was concerned with two or three other specific issues in respect of the Commissions of Inquiry and these dealt with matters such as Commissions of Inquiry being ineffective because their reports, their recommendations had no enforceable effect. They are merely recommendatory. It is open for Government to accept it or reject it. The Law Commission went exhaustively into the question. It was open for successive governments to use Commissions of Inquiry as a weapon and therefore the Law Commission felt that the question of definite public importance would have to be defined so that successive political governments or the previous parties that had been in power may not misuse the Commission of Inquiry Act. I will venture just to make a small quote from the report of the Law Commission which could well be the last word on the subject. In paragraph 16 of the Law Commission's Report on the Commissions of Inquiry Act, 1952, it has been said:

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"Lastly it has been suggested that the Act should provide that a report of the Commission of Inquiry should be published as soon as it is submitted to Government. Whether a report should be published or not will depend upon the nature of the inquiry and the report made to Government. There may be certain cases in which it may not be advisable to publish the report. We therefore think that this matter should be left to the discretion of the Gov-

ernment. Where a Commission of Inquiry has been appointed in pursuance of the resolution of the legislature, we have no doubt that the report will be placed on the table of the legislature. But in other cases we do not think that a rigid provision should be made that the report should invariably be laid before the legislature. Wherever necessary the legislature will be able to assert itself and beyond this it is not necessary to go."

I believe this speaks for itself. Even the Law Commission when it went into the question has specifically said this. This is not something that the Government or the ruling party has pulled out of the hat. Even the Law Commission as early as 1962 had said that it is not advisable in all cases to always place the report of the Commission of Inquiry on the Table of Parliament and it is for Government to decide and, if necessary, Parliament can assert itself and insist upon its right in this case.

Later on in 1971 when the Act was sought to be amended and this matter was referred to a Joint Select Committee of Parliament, the only paragraph that deals with this particular recommendation of the Select Committee reads as follows:

"During the course of evidence given before the Committee it was brought to their notice that many a time reports of Commissions of Inquiry on important issues of national interest could not see the light of day even though considerable money from public funds had been spent thereon. The Committee therefore consider it necessary that a specific provision should be made in the principal Act requiring the appropriate government to cause the report of the Commission to be laid before the House of the People or the Legislative Assembly..."

Sir, I read this only to show that even at the time when the Joint Select Committee considered this amendment, no great public interest in the right of information was ever raised before them, nor was that the object of this amendment. The only object of the amendment was that public money should not be wasted because most of the reports of Commissions of Inquiry were consigned to the archives. This was the sole reason for the amendment and in law, I venture to state, the reasons for the amendment have always to be taken into consideration when it is going to be amended even further.

Today, Sir, times have changed. We are no longer in the courteous in the gentlemanly, quiet era of 1952, nor are we in the relatively quieter era of 1971 when the second amendment was brought about. We all know—and it is needless to say—that our society today is in a state of ferment. The entire fabric of our society is sought to be pulled apart by forces of destabilisation, as even the other side has thundered. So we have to face harsh, compelling, grim realities of terrorism, of communal riots and of forces of destabilisation. Government has to handle this with a firm hand. So we cannot allow our country and Parliament to be held to ransom by a group of terrorists. Therefore if Government has to be courageous, has to be firm, has to be determined to take a stand to protect the paramount interests of the country—the welfare of the people being the paramount consideration—then, Sir, I say that this Bill is essentially to help Government in its laudable intention of protecting the sovereignty and integrity of the people.

A Commission of Inquiry, as I have said earlier, is not a universal panacea for all evils that beset the civilised society. Nor is it some kind of a divine revelation that is to be maintained and preserved intact from the day on which it was revealed. A commission of inquiry, if you bring it right down to brasstacks, is merely a fact-finding body. It has no *proprio vigore*, it has no force by itself. In a civil suit before a court, there is a

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list, there is a cause of action, there is a plaintiff and there is a judge. In a criminal trial there is an accused, there is a prosecutor and there is a judge. In both these cases the decision of the judge, the judgment or the order, is binding and enforceable between the parties. But in a commission of inquiry, the recommendations of the commission of inquiry have absolutely no independent force by themselves. They are purely recommendatory in character. In the words of the Das Commission, "The function of the commission of inquiry is only to inquire and report to the appropriate Government so as to inform the mind of Government and to enable it to take such action as it may, under the circumstances, think fit." Sir, no greater sanctity should be attached to a commission of inquiry than that. After all, it is only a fact-finding body to inform the mind of Government as to what is the best course of action to take in the interests of the nation.

Sir, much has been said about the rationale behind the concept of public interest. The very Commission of Inquiry Act, if I may say so with great respect, erodes seriously on individual liberties. I say this with a sense of seriousness because in various proceedings before commissions of inquiry, sometimes the report of a commission of inquiry can irretrievably and to totally ruin a person for life and he can have absolutely no redress against that report. If I may be permitted to quote the very eloquent words of Sir Alfred Butt in the House of Commons on the report of the Commission of Inquiry in the Budget Leakage Inquiry in 1936:

> "I would ask the Rt. Hon'ble Members to visualize the position in which I now find myself. I have been condemned and apparently I must suffer for the rest of my life from a finding against which there is no appeal and there is now no method open to me by which I can bring the true and full facts before a jury of my fellowmen. If any good may come of this, the most miserable moment of my life, I can only hope that my position may do something to prevent any other person in this country being subject to the humiliation and wretchedness which I had suffered without trial, without appeal and without redress."

Sir, also it is clear—and courts have also held—that parallel proceedings are possible. Very often when a commission of inquiry is appointed to go into the truth of a particular matter, criminal prosecution is also launched and in this circumstance the accused suffers a great disability by the simultaneous functioning of the commission of inquiry. For one thing, a commission of inquiry is usually presided over by a judge of a superior court such as a High Court or the Supreme Court whereas a criminal trial is conducted by a magistrate who belongs to the lower judiciary and, more often than not, the magistrate belonging to the lower judiciary would find himself to be embarrassed if not bound, by what the commission of inquiry has said. Then again, Sir, in a commission of inquiry the accused would have to disclose his defence instead of being allowed to take advantage of the weaknesses of the prosecution, and in that case also he would be seriously prejudiced. Without going into the details the Law Commission went into the matter and felt that no doubt the Commissions of Inquiry Act constituted a serious erosion into certain individual rights of the people, but if you put the matter in balance, if you put the private interest of a citizen against the general public interest before a commission of inquiry which has to arrive at the truth, there is no doubt that the private interest of a citizen will have to take a second place to the public interest which the commission of inquiry seeks to achieve. It is in this place that a red herring is sought to be drawn across our track. It is sought to be made out as if Government has some deep, nefarious, private, vested

interest in suppressing reports of commissions of inquiry. I say this is not so. There is no private or vested interest on the part of the Government in attempting to suppress the report of any commission of inquiry. What we have here is another public interest that has to be balanced against the public interest which consists in the right to know. Sir, no doubt, the right to know is a Fundamental Right flowing out of the Fundamental Right of freedom of speech. But at the same time, if you put against it the competing and conflicting public interest of the unity of the nation, of the security and sovereignty of India, there can be no doubt that the unity of the nation, the security and sovereignty of India are far more important than any individual right of the right to know. Sir, we have not dreamt these words overnight nor have we pulled out of that. According to the Constitution of India which enshrines all the rights of the people, in article 19(2) it says:

> "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality,...(etc.)"

Therefore, the Bill says about the interests of the sovereignty and security of India, in the interest of the integrity of the country. It is open to Government to place before Parliament the question of not placing a report of a commission of inquiry. Sir, I say it is a reasonable restriction on the right of information, on the right to know. This is a reasonable restriction which flows from the clauses that have been found in the Constitution. Even if you proceed away from the Constitution and look at the judgements of the Supreme Court in various fields, this is a mapority judgement given by the Supreme Court in 1982. If I may be permitted to read, Sir, it says:

> "Undoubtedly there must be such affairs of State involving security of nation and foreign affairs where public interest requires that the disclosure should not be ordered. It is, however, equally well recognised that a fair administration of justice is itself a matter of vital public interest. Therefore, if two public interests conflict, courts will have to decide whether the public interest that forms the foundation for claiming the privilege would be jeopardised if disclosure is ordered and on the other hand whether fair administration of justice will suffer from non-disclosure and decide which way the balance tilts."

Therefore, Sir, even the courts have held that if there are conflicting and competing public interests, it is for the body before whom the competing and conflicting interests are placed, to decide which public interest deserves the greater importance. If I humbly submit to this House that in this case if it is a question of conflict between the right to know and the right . . . (*Interruptions*)

AN. HON. MEMBER: Don't interrupt. It is a maiden speech.

MR. DEPUTY CHAIRMAN: Please proceed.

SHRIMATI JAYANTHI NATARAJAN: I don't mind.

Therefore, between the competing public interests of the right to know and the sovereignty, security, unity and integrity of India, there can be no doubt in the minds of reasonable men and women that the sovereignty, security, unity and integrity of India are paramount, and this is what deserves our consideration.

Another important aspect which I would like to deal with has already been dealt with earlier. It is sought to be made out, Sir, as if the executive

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has arrogated to itself or as if the Bill seeks to confer on the executive arbitrary, whimsical and capricious powers to decide, in cases which suites them to suppress the reports of the commission of enquiry. As has already been pointed out before me, Sir, section 3(6) clearly provides that the notification notifying that the report of the commission of inquiry would not be placed before the House of the people has to be first placed and a resolution passed to this effect. Sir, there can be no doubt that the power of Parliament has not been whittled down or taken away in any respect. Ultimately it is Parliament that has to decide.

Sir, I have also heard an argument that it is not possible for Parliament to decide whether it is necessary in public interest to keep the report a secret or not without going into the contents of the report. Sir, my humble submission to this House is that it would be anomalous and fallacious to say that to decide whether it is in public interest or not you have first to see the report, for the simple reason that the only way by which a report can be published is by placing it on the Table of the House. Therefore, the moment the report is placed on the Table of the House, it is published, and there is no further need for a notification or for a Bill. The whole Bill would be unnecessary, redundant. Therefore, Sir, if that is the only way of publication, it is impossible to place the report on the Table of the House without publishing it and rendering the whole argument useless. The debate will have to be upon the reasons of the Government. Sir, it is no doubt that the view of the majority is going to prevail finally in any parliamentary democracy. The view of the majority has to prevail and we have to accept it gracefully. Sir, at times of crisis and at all times, I think, we have reposed our confidence and our faith in the Government. Therefore, it is unwise to attribute *mala fides* to the Government. The Government does not always act *mala fide* ....*(Interruptions)*...

SOME HON. MEMBERS: Sometimes it does.

SHRIMATI JAYANTHI NATARAJAN: I agree that all Governments act sometimes *mala fide*. This is not the only the Government that acts *mala fide*, but all Government act *mala fide* sometimes. Therefore, Sir, if this Government or any other Government wanted to act *mala fide* it need not appoint a Commission in the first place. If it did appoint a Commission, Sir, under section 7 of the Commission of Inquiry Act it can always dissolve the Commission at any point of time. Then, again, Sir, after the report has been given the Government need not take any action at all on the report. Therefore, if Government wanted to act *mala fide* there are so many ways of doing it. It does not necessarily have to suppress a particular report.

Sir, finally I would like to quote from Justice Krishna Iyer about the assessment of the Commissions of Inquiry that have been appointed till today. He says that "it is an indisputable fact that in Commission of Inquiry, the expenditure expense involved is immense, the delay considerable, the methodology is ineffective and rigid, the probative value of the end product of the report to punish the delinquent is nil. The administrative respect shown is dubious. The ultimate public good is illusory and the frequency of use blunts the instrument". This, Sir, is an assessment of the work of Commissions of Inquiry. Sir, as you know the object of the Commission of Inquiry itself was limited. The amendment in 1971 was limited. I say it would be placing too much.....

SHRI A. C. KULKARNI: What about Kudal Commission? *(Interruptions)*

SHRIMATI JAYANTHI NATARAJAN: Therefore, in view of the

limited nature of the scope and operation of the Commissions of Inquiry Act, it would be unwise to attach far greater sanctity to it as that being the last bastion and last hope of democracy. It would also be even more unwise to place above the national interest what is now sought to be protected. Thank you.

MR. DEPUTY CHAIRMAN: It is her maiden speech. It was very good. Mr. M. S. Gurupadaswamy.

SHRI M. S. GURUPADASWAMY: Mr. Deputy Chairman, Sir, having listened to some of the speeches from my friends here, I have come to this view that the Government has no case in this matter. Sir, the Commission of Inquiry is not a new phenomenon. It has been there in our system; while in all the democracies of the world, Commission of Inquiry is a means by which issues affecting the public interest, the public welfare and the security of the country are inquired into. This is a normal act. An inquiry is held when there is a public demand, when there is a demand made by Parliament or when the Government feels strogly that a particular matter effecting the wider interest of the public requires thorough inquiry, only then, Sir, an inquiry is held. The implication is: people who demand inquiry are entitled to know the various aspects of the inquiry. It is a fundamental and basic tenet when a public inquiry is demanded and ordered, the public cannot be denied of the subject matter of the inquiry, the evidence before the Inquiry Commission and the recommendations of the Commission. Sir, my friends from the treasury benches have been confusing between official secrecy and public inquiry. My friend, Mr. Bhatia, I thought, he is an eminent lawyer and he would enlighten me about the various implications of this Bill. But, unfortunately, after hearing him, I am to say that I am totally disappointed. He confused official secrecy with inquiry. The inquiry demanded by certain sections of the people or by Parliament when held particularly under the Commission of Inquiries Act which is a statutue of Parliament, nothing can be withheld from Parliament. Inquiry is held under the statute of Parliament and Parliament cannot be denied access to the various things that had come before the Inquiry Commission. This is a fundamental principle. Sir, there are secrets. I state that the Government of the day which has responsibility of running the country enjoys certain privileges in the matter of secrecy. There are intelligence services for the purpose, Official secrets Act is there for that purpose and they are demarcated and defined. When they are so, why should we bring these things under matters inquired by the Commission of Inquiry? Therefore, let us not confuse ourselves about the Official secrets which come under the Official Secrets Act and the inquiry that is being held by the Commission of Inquiry. Sir, here I heard carefully the speech of my friend, Mr. Minister, a very short and bikini speech. Sir, he tried to make out a case that the rights and privileges of the Parliament are not taken away by this amendment. He said the notification will be there before Parliament for discussion. And it has been pointed out by my colleagues here that the notification cannot be discussed effectively, comprehensively, fairly, satisfactorily unless and until all the facts which were there before the commission of inquiry are also placed before the House. It is just like placing a skeleton on the Table of the House without placing the body. Unless we know the body, the contents, the main things, it will be stupid on our part to expect Parliament to debate intelligently, rationally the various aspects and facets of the enquiry. Therefore, my point is that the notification is not a solution to the problem. The notification is only a device to hoodwink Members of Parliament, to hoodwink Parliament.

Sir, according to the Commissions of Inquiry Act, even after this amendment is passed, a memorandum of

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action has got to be prepared by the Government. The memorandum of action has got to be prepared after considering the various recommendations in the report of the inquiry commission. And this memorandum of action can be debated by Parliament. You cannot withhold it. When that is so, you cannot take away from the House the necessary information, facts which are needed for a debate in the House. The memorandum of action without relation to the report cannot be discussed. Whenever you come with the memorandum of action, you have got to bring before the House at least the basic recommendations of the inquiry commission. You cannot escape from this. This Bill, even after it is passed, cannot save you from this. Therefore, I say that from this point of view, the Bill is superfluous redundant, unnecessary. You cannot take away the right of Parliament from discussing, from going into the merits of the case whenever it debates the memorandum of action.

(The Vice-Chairman (Shri Pawan Kumar Bansal) in the Chair]

Then the Minister takes shelter under various things, that in certain contingencies the report cannot be published in the name of security of the State, in the name of public interest, in matters which affect foreign relations and in matters which affect the sovereignty and integrity of the country. Sir, I would like you to go into the past history of this country after independence. Can you quote one instance where Members of Parliament, belonging to any political party for that matter, did not support the Government whenever there was a threat to the integrity and sovereignty of this country? At the time of the Chinese aggression, at the time of the Bangladesh war, at the time of wars against Pakistan, at no time did the people or Parliament say anything against the Government. They solidly stood behind the Government and supported it. Where was the occasion? .... (*Interruptions*).... At no time whenever there is a threat or danger or challenge to the nation, this Parliament, the Members of Parliament, the political parties, shirked their responsibility. They had supported the Government of the day wholeheartedly, unconditionally, without any prevarications. Therefore, to quote security of the country, public interest, matters which affect our relations with friendly countries and matters which affect the sovereignty and integrity of the land, are, to my mind, superfluous. They need not teach us patriotism...

SHRI P. N. SUKUL: What about the security of the State? They have played havoc with the security of the State.

SHRI M. S. GURUPADASWAMY: I have pointed out about security of the State. I have already pointed out, I have drawn a distinction between a commission of inquriy and official secrecy. You want to enlarge the veil of secrecy to deal with matters which are inconvenient to you; the purpose of this Bill is to suppress information from us in matters which are embarrassing to you; The Government is duty-bound to take Parliament into its confidence in these matters. If public interest and security of State are involved, if the Government feels very strongly about a matter—my friend has suggested already—Parliament may be convened, a session can be held in camera. And I think there was one instance when there was a debate in camera—I am not very sure...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: No, no, not here...

SHRI LAL K. ADVANI: British Parliament had such a meeting.

SHRI M. S. GURUPADASWAMY: I stand corrected. I said I was not very sure. My friend, Advaniji, said about British Parliament. He reminds

me of what happened during the days of War, the Second World War. During those days when Great Britain was threatened by the menacing forces of Hitler, even at that time, in the hour of trial for the entire country, there was an open debate, there was no secrecy, nothing was suppressed, everything was debated openly, because they believed in open society, open debate. I feel strongly that when you are committed to open society, open system of Government, I expect the Government to take Parliament fully into their confidence. Whenever vital issues are involved which affect the interests of the country, we are second to none in supporting the Government in such matters when challenges do occur. In the case of the assassination of President Kennedy, what happened? There was a commission of inquiry. There was a Warren Commission. There was an open inquiry....

SHRI MURLIDHAR CHANDRAKANT BHANDARE: No; it was in camera.

SHRI M. S. GURUPADASWAMY: In camera alright, the document was published. It was debated. But here now the purpose of the Bill is to suppress a report, Thakkar Commission report perhaps or Mishra Commission report or some other report. If you suppress a report, if you withhold information from the House, from the public, it is natural that you will give room for misgivings, doubts, suspicions, and it will not be in the interest of the country. It will not be in the interest of the country to have rumours floating around; it will not be in the interest of the people. But it will be in the interest of the country to take Parliament into confidence; the less secrecy, be better. Domocracy cannot function in an atmosphere of secrecy for a long time.

Sir, I believe that freedom of communcation, freedom of speech and freedom of information are fundamental to democracy and if you suppress them in any manner, by any means, to that extent you would be doing a disservice to democracy and democratic institutions. Thereore, I want that the Minister should withdraw this Bill even at this stage. This is a very sinister Bill and it is a black Bill. I say this because it takes away the rights and privileges and powers of Parliament. And, Sir, secrecy can be maintained without resorting to this amendment and there are various other means by which you can maintain secrecy.

SHRI P. CHIDAMBARAM: How?

SHRI M. S. GURUPADASWAMY: The Official Secrets Act is there. I have already told you that there is the Intelligence machinery.

SHRI MADAN BHATIA: Sir, on a point of order. Sir, the honourable Member has said that there are ways and means of ensuring the secrecy of the reports.

SHRI M. S. GURUPADASWAMY: Not report. I said, the Official Secrets Act is there.

SHRI MADAN BHATIA: Let him explain what he means by official secrecy.

SHRI M. S. GURUPADASWAMY: There is the Official Secrets Act. There have been in the past, as my honourable friend knows, departmental inquiries also. But an inquiry held under the Commissions of Inquiry Act cannot be tyeated as a private or a confidential thing and cannot be treated as secret. This is my submission. Therefore, Sir, I would like the Minister to reconsider his stand and withdraw this Bill, this very sinister, very objectionable and very obnoxious Bill. Thank you. Sir.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Now, Mr. Hanumanthappa.

SHRI H. HANUMANTHAPPA (Karnataka): Sir, I stand to support this Bill which has been brought forward by the Minister just to seek the Permission of Parliamnet to withhold the reports of Commissions of Inquiry in the interest of the sovereignty, integrity and security of the State and our friendly relations with other countries.

Sir, my predecesor, Shri Gurupadaswamy, narrated that even during the

[Shri H. Hanumanthappa]

wartime, the British Parliament was able to discuss all matters. But what is the situation that we are facing today or that we are living in today? There is no war. No country has declared a war against us. Had they declared, we would have been free to discuss openly. But, unfortunately, they are encouraging in our country anti-national activties by pumping in money, by paiming terrorists and so on. This was not the case when the British Parliament discussed many things openly even during the period of war. But what is the situation that Indian is passing through now? You from the Opposition have said that many a time you have quarrelled with the Central Government for not giving more autonomy to the States. But, at the same time, you have also said that the Central Government should move the army into the border areas. Why? Because the situation warranted the moving of the army into those areas. So, there are special occasions when we have to take certain decisions which we will not debate every day and which will not come out into the open. So, here is such a case. Particular terms of reference were framed for the thakkar Commission and the Thakkar Commission covered various aspects, and the Government, after going through the Commissions Report, after taking into account the sit aution prevailing in the country and the matters referred to the Commission and the various evidences recorded by the Commission, in its wisdom, came to the conclusion that it is not in the interest of the sovereigntly, unity and security of the State as well as our friendly relations with other countries. At the present juncture, while moving the Bill, the Minister of State said that it may not be permanent law. No law is static. My friend, Mr. Madan Bhatia, said very well that law is nothing but the codified will of the people. The people's will may change. At the present juncture, the Indian society and the country are going through a turmoil. There is terrorism and also threats from outside agencies. There are threats from our own people rising in revolt. In such circumstances, some of these things may not be in the interest of the State or in the interest of the country. It is a necessity. Even if the Government had taken a stand to publish, then also the other side might have raised their voice saying that some of these things should have been kept secret and they should not have been highlighted and that the Government has committed a mistake. Many a time, we find that a particular scene in cinemas is shown for educational purposes and the younger boys take a lead in committing theft. It was meant to educate them. It was meant to train the youth. Unfortunately, there are anti-social elements. There are people who are not looking at the nation's interest. They take a lead and act pervertedly. I feel that the present *Bill* which has been brought before the House is quite welcome. Was there any incidence in the last 40 years in which our territories were threatened? My friends suggested that we should invoke Article 249 of the Constitution. My friends suggested it the other day before the Prime Minister. The situation is going out of control. Just to keep it under control, certain enactments are to be brought. The Government of India has brought forward this Bill. Now, democaracy is majority rule. The Government of the day which is in power and which has go the majority support, has come to the conclusion that in the interest of the country, sovereignty and unity, it is not necessary to publish the Commission's report. The Commission's report was given and the Government has rightly come before the Parliament to take the permission of the Parliament not to publish the report in the present situation. Shri Advani was very particular about the time, about the dates 14th and 19th. I am more particular about the situation that is prevailing in the country. The situation warrants to keep certain things as secret. If the Commission's report is not placed on the Table of the House, it does not mean that the Government will not act upon it. hese days, we find that secrets are being sold for a few chip and supplied to other countries. In such circumstances, I feel that the Government is well within its rights in moving this amendment and arming itself with powers to withhold certain information in the interest of the sovereignty, unity and integrity of this country.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Mr. P. Upendra. Your time is 10 minutes. But please conclude in 15 minutes.

SHRI PARVATHANENI UPENDRA: Sir, I will abide by you and exceed by five minutes. I will try to finish in 15 minutes. Much has already been said. Mr. Vice-Chairman, Sir, let me tell you that deliberate attempts are being made to undermine the prestige and authority of the Parliament. We have protested several times regarding the absence of the Prime Minister in the country when the Parliament is in session, about placing of the reports on the table of the House and also the way the Parliament is being treated in regard to so many matters. This is one more instance where the prestige and the authority of the Parliament is sought to be eroded by a Bill which is highly objectionable and unprecedented in the Parliamentary history of this country. Sir, hard cases make a bad law. It is not necessary for the sake of one report of a single Commission to take all this trouble to introduce this Bill and to take recourse to such a measure which I already said is detrimental to the prestige of the Parliament. When we appoint Commissions, whether at the Centre or in the States, there is a definite objective for that. When do we appoint a Commission? It is only when the usual investigating agencies do not evoke the confidence among the people, when there is a demand from the people that something more should be done to unravel the truth to find out what really happened, then only the Commissions are appointed and rightly so. And we involve the Judges of the Supreme court and the High Courts to head these Commissions those who are very much respected in whom the people have the confidence. You take recourse to that you utilise their services and they spend valuable time and also public money in going through all the facts of the case and arrive at a conclusion. And that is the only way the Government can satisfy the people when they find, what they feel that the usual investigating agencies are not able to do the job properly. Otherwise, why should you appoint a Commission at all? You have got the CBI, you have got the IB, you have got the RAW. The State Governments have got their own police agencies. They are good enough. If the investigations are to be like that only and if you do not want the truth to come out, if you want to suppress the truth ultimately, then why take the trouble of appointing Commissions and troubling them and wasting the public money on this? You can take recourse to the usual forums that you have got, the usual agencies that you have got. But you yourself admitted that there is something more to be done, when you appoint a Commission. That particular objective is being defeated by this Bill. Sir the idea is that whatever be the truth, however unpalatable it may be, once the truth is unravelled, once the mystery is unravelled, once the facts are revealed, you should take the Parliament and the people into confidence and tell them what all really happened. Otherwise, these suspicions will increase. You are not putting an end to the suspicions. Rather by suppressing the report, by keeping it confidential, by not revealing its contents, you are only increasing the suspicion among the people which is not good. More rumours will float, more immuendoes will pass and more allegations will be made which you will not be able to control.

Sir, the Minister has said in the other House also that "even though this Act came in 1952, up to 1971 it was not considered necessary to include this provision. All along it was going on well". But he should also not forget that even though it was not provided in the Act, the reports were being placed before the Parliament and the State Assemblies, all through from the date the Act was passed. Therefore, he cannot take cover under that. Sir, there is also a provision. If at all the Minister wanted some of the contents of the report to be kept confidential, he should have taken the Opposition into confidence, the Parliament into confidence There are so many ways in which it can be done. Instead of that, he is bringing a Bill, a blanket Bill which will give a draconian power to the Government to suppress everything, to suppress the truth. Sir, the Minister has said that ultimately the Parliament will be

[Shri Parvathaneni Upendra]

taken into confidence. The matter will ultimately go before the Parliament under clause 6 because Parliament will decide whether a particular notification has to be approved or not. Sir, this is adding insult to injury because you are first taking a decision at the executive level that this report will not be placed before parliament and you are coming before Parliament and Assemblies asking them to approve or disapprove the Government action. How can you expect the Members of Parliament or State Assembly to give their judgment to approve or disapprove without knowing the contents of the report? You are asking the Parliament to ratify your action blindly. That means you are taking Parliament and Assembly for granted. How can you expect the Members to say whether your decision to keep the Commission's report unpublished or not placing it before Parliament is justified or not? How do you arrive at a decision without knowing the contents? And you have not given a satisfactory answer for that. How will you arrive at that decision? In your reply I expect you to satisfy that point also. This way you are behaving as if the Parliament is a captive institution of the Government whereby you will say that this has been ratified, this executive action has been ratified. That means you are proving to the world that whatever you do, Parliament, a captive Parliament, will ratify it. It does not add to the dignity of Parliament. We have such a high reputation for our Parliament in various countries abroad where we are boasting that ours is a bulwark of democracy in the world and we are known as the greatest democracy in the world. But this is not the way to treat Parliament and give the impression that this is a captive Parliament and you can get anything done by Parliament, even blindly.

Now the Thakkar Commission reports are there. These reports are perhaps the provocations for the Government to come forward with this Bill. The Thakkar Commission has already given the Report. Charges, counter charges and many suspicious are there. The Prime Minister was brutally murdered and the whole world was waiting to know what happened, where were the lapses, so that these lapses will not be repeated and also they want to know what the Government is going to do so that such things do not recur. The Prime Minister's life was involved and similar things should not recur in this country. How will you satisfy the Parliament and the people about your action, about lapses which occurred in this regard? Because of suppressing the report, you are only concealing the facts from the public.

Sir, I believe, I do not know how far it is correct, some newspapers have mentioned it and even Indian Express also carried a report that the Thakkar Commission blamed certain officers, put the blame on certain section of the officers, particularly the intelligence officers and I believe they are being promoted. At the same time some officers of the police, Delhi Police, are still under suspension, no charges have been framed and no charge sheets have been given, they are still under suspension. I would like to ask a pointed question. Tomorrow, for instance, you take action against an officer or you have to close the case, what charges you will give. You cannot keep a person permanently under suspension. If you are to take a final action, you have to say that "this is the finding of the Commission, you have been found guilty, suspended or whatever it is or you have to be removed from the service". The man is free to challenge it and go to the court. He may then ask for a report of the Commission to be brought before the Court. How will you avoid this situation? You want to close the case or you want to punish these people who are guilty and who have shown laxity in their duties. How are you going to meet this situation and how are you going to close these cases, I also want to know.

Finally, Sir, this measure is bad in law because you are giving unbridled powers to the executive even to override the Parliament, even to conceal something from Parliament. I do not think any

court of law will accept this unbridled power to the executive. The courts are always there to challenge it, pass judgement against it. With these few words, I oppose the Bill and I hope the Minister will at least have some good sense even now and reconsider the matter and some before Parliament with a revised measure and take a decision to take Parliament into confidence and evolve a system by which the same objective can still be achieved. We are also nationalists; we also know what is in national interest. If you want to conceal something or keep away from the public, why do you think that we will object? You evolve a procedure by which Parliament is also taken into confidence. You can say to us. "I am taking you into confidence; please do not reveal it.' At least, you satisfy us about the action that you are taking as per the Commission's report.

These are the points I wanted to raise and I hope the Minister will not only answer these questions but--being a sensible man and a good lawyer—he will understand the weakness of his case and withdraw the Bill.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Mr. Vice-Chairman, this is one of the important debates and I took care to go through every word that has been said in the Lok Sabha. I have got those reports here. I have tried despite my engagement which I could not cancel, to follow with careful attention, the debate here and particularly the feelings of my friends of the Opposition because it raises a somewhat important and substantial question of the right to know. And I am not belittling what they are saying. But at the same time, having listened to them very carefully, I am totally left unconvinced on any of their arguments. And I am going to try to meet each one of them with the limited capacity that I possess. I wish I could have a little more time; but the time is limited. The main objections are, that this Bill affects the free and open society; that this Bill affect the right of Parliament to know into something which is the baby of the Act of Parliament, and so on and so forth, not to refer to the skeletons and conspiracy and other things which the hon. Members from the Opposition have chosen to mention.

First, let us know whether there is something like absolute right to know. I can tell you that in these matters of free and open society, of standing by the highest of democratic values, I think I will measure up to anyone else in this House or elsewhere, because that has been the very creed and an article of faith with me. I will tell you what happened when I became Member of Parliament. I was very happy and I said now I am in a position where I will get to know everything from the Government. I was also happy that with my privileges on the floor of the House, I will be able to say anything I like, immune from the Law of Defamation, immune from any other legal consequences, though as a man, as a member believing in democracy and human dignity, I imposed a small restriction on myself not to speak in this House anything which I cannot utter outside, unlike many Members who want to insist on their privileges in full. And then, like a fool, I went through the Rules of Procedure and Conduct of Business in the Council of States. My prescription to the new Members who have come here is, 'do not make a mistake of reading

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these Rules' because you will not become a successful Parliamentarian if you read them. I was amazed. First, I attended the Question Hour because the day in Parliament begins with the Question Hour. I thought since we, as lawyers, cross-examine witnesses, I will also cross-examine the Minister here. To my utter amazement, I found that sub-clause (xxii) of clause (2) of rule 47, which deals with the conditions of admissibility of questions, says 'it shall not seek information about matters which are in their nature secret'. My enthusiasm dampened. I thought, this is a very serious inroad into my rights as a Parliamentarian. I thought, this is a very serious infraction of the principle of free and open society. I started thinking, what is this. Is this correct?

SHRI M. S. GURUPADASWAMY: Don't forget the words 'secret in nature'.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I will come to all the natures and all the secrets. When I looked at it more deeply, I realised that it was done to protect, to preserve, to promote, to enhance, to enrich, free and open society and the democratic norms in our country. This is a restriction which every Member should be aware of when he talks of any infraction of his rights by measures like the present one, to which I will come. As a lawyer, I have some experience. I can tell you of a very interesting case, where Blitz was sued for defamation by Thackerseys. One witness was being examined. Trial was being held before a very eminent person for whom I have high regard and personal affection, Justice Tarkunde. He said that the testimony or the evidence of one of the witnesses should not be reported in the Press at all. Now, we all felt that this was an affront on the freedom of the Press. We all felt that this was destroying the free and open society and we were quite aghast that the judgement was given by no less a person than Justice Tarkunde. The matter was taken to the Supreme Court. It is now the famous case called the Naresh Mirajkar's case in which the Supreme Court held that a judicial trial could say that a matter should not be reported and that was the be-all and end-all of the freedom of the Press, the right to know of a reader, fair trial and so on and so forth. Then, when I looked at this...

SHRI LAL K. ADVANI: We have also off the record here many times.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: When I went into this Act, I found to my horror. These are all Commissions of public enquiry. These are all public enquiries. There is no private enquiry contemplated by the Act and only section 8 says that the Commission shall regulate its own procedure. To my horror, I found rule 5 that a Commission can sit in public or in private as it thinks fit. I was aghast. I said, 'Why should a Commission of Inquiry, public Commission of Inquiry, sit in camera or in private?'. I remember the days; the enthusiasm and joy with which we attended the Chagla Commission of Inquiry which into the Mundhra deal. It used to be held—I think, hon. Member, Mr. Jagesh Desai will bear me out-- in the Council Hall of Bombay in those days. There used to be loudspeakers. There were a number of Commissions of Inquiry in which I appeared; we had loudspeakers and we went into the whole thing. When I went into this, I found that Justice S. R. Das, an eminent judge of the Supreme Court had said, while investigating, as a Commission of Inquiry, into the charges against

[The Vice-Chairman (Shri H. Hanumanthappa) in the Chair].

late Pratap Singh Kairon, the then Chief Minister of Punjab. This is how he laid down the area of holding the enquiry in camera. If there are involved scandalous things or matters of security-- I am underlying the words, matters of security—or things which would incite public feelings this is the most important 'things which would incite public feelings-which would vitiate the atmosphere, then it will be held in camera. I find that this guideline was followed by Justice H. R. Khanna about whom nobody can say that he was out to destroy democracy. One cannot think of a trial except under a public gaze and yet he upheld the same thing. I found Justice Mathew doing the same thing in L. N. Mishra's case. And then I thought when all these Judges are accepting that things can be kept secret, there must be something in favour of that secrecy and I realised that that secrecy is necessary to preserve the very basic integrity of this country, the basic independence of this country, the territorial unity of this country because it is easy to say things which are in their very nature sensitive, which are in their very nature explosive and then it is no use repenting for having exposed these things. I found, what hon. Gurupadaswamy said was not quite correct. I found that even the Warren Commission...

SHRI M. Set. GURUPADASWAMY: I stand corrected.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Excepting one witness it was held in camera. Now I will deal with this point since I am referring to that. Therefore, it was not withoutparallel that you have public enquiries exclusively in camera, if that does not destroy free and open society, if that does not destroy the right of this Parliament (*Interruptions*). I am going to deal with the present provision at length. I am only prefacing it. This present provision stands on equal footing. Let me deal with a point which was made and it is a matter of some serious conviction. (*Interruptions*). My friend hon. Gurupadaswamy referred to the Warren Commission on Kennedy assassination. Anyone of us here knows the difference between the Kennedy assassination and Mrs. Gandhi's assassination. I don't have to say that. One has resulted in such an explosion and disturbances that there was the very threat to the unity and integrity of our country but there was no such problem in America at all. Therefore, to draw a parallel between the two itself is wrong. Excepting the assassination there is no common point between the Warren Inquiry and this Inquiry. Therefore, if ever in an enquiry things which are metioned in this, to which I will come, the parameters of this Bill were present in the full measure, it is in the case of Thankkar Inquiry;

SHRI K. MOHANAN: In Profumo scandal case Lord Dennings Commission made the enquiry in camera but the findings of the Loard Dennings Commissions were made public. Now it is a public document although the enquiry was made in camera

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am glad that at least some Members are talking and it is heartening to find that, yes, enquiries can be conducted and ought to be conducted in camera.

SHRI N. E. BALARAM: He was not on that point at all. (*Interruptions*).

SHRI NIRMAL CHATTERJEE: He was more perceptive than this.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am also glad that some Members, particularly...

AN HON. MEMBER: It is nobody's case that it should not be held in camera.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am against holding of any enquiry in camera. I am in favour of all public trials, but you are all agreed that it should be held in camera. I am glad. (*Interruptions*). I am coming to that. (*Interruptions*). INow I come to the other suggestion. I am amazed. Of course I don't have the privilege of being reported by the Press.. I find that Just when my name comes, it forgotten and it will end up with Mr. Upendra's speech. But I am not worried about it. The point which I am making is. . .

SHRI M. S. GURUPADASWAMY: There should be an enquiry on that.

SHRI LAL K. ADVANI: Why do you look up?

SHRI MURLIDDHAR CHANDRAKANT BHANDARE: The point which I am making is, hon. Member, Mr. Upendra, suggested that we have a Parliament session in camera. Now I just want to know what the people will think if we hold our Session in camera and it is not reported to them. Therefore the point I am making is....

SHRI JAGESH DESAI (Maharashtra): That may amount to withholding information.

SHRI MURLIDHAR CHANDRAKANT BHANDARE. I am sorry this is a very serious subject. The whole question is, all this goes to show that an information can be withheld.

Now, I come to the terms of reference of the Thakkar Commission. I do not want to read the whole thing, but term (c) says:

> "the deficiencies, if any, in the security system and arrangements as prescribed or as operated in practice which might have facilitated the commission of the crime".

I am not reading the other terms now. I will read the last one and take others

[Shri Murlidhar Chandrakant Bhandare].

later: the Commission may also recommend the corrective/remedial measures that need to be taken for the future with respect to the matters specified in clause (b) I ask myself, whether I could turn to the Home Minister and ask him: Sir, Question No. 142, could you give the details of the security system and arrangements prescribed for the Prime Minister"? I am quite sure his answer would be, in the very nature, it is secret. He would not tell the House all this: we have got this system, we have got 5 guards here, 10 guards here we have got a wireless set here, a walkie-talkie here, sten-guns here, machine-guns here. Nothing of the sort will be told. And I am saying with all seriousness that if no Member can get an answer to this question as to what the present security system is which protects the Prime Minister or the President of this country, I am quite sure that this part of the report which deals with the security system and arrangements, the failure of that system, the remedial measures for that system cannot be disclosed, particularly at this very sensitive and crucial time in our country.

SHRI NIRMAL CHATTERJEE: Just one interruption. But is it not permissible to enquire what was the security system which failed to protect the Prime Minister? Can we not try to find out any details about that?

SHRI MURLIDHAR CHANDRAKANT BHANDARE. All these things can come to light in due course. But I do hope that this notification which has been published...

SHRI NIRMAL CHATTERJEE: At least what was the security system that failed?

SHRI LAXMI NARAIN (Delhi): It is sub judice.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: If the system cannot be disclosed, can you disclose that part of the system that failed? After getting this report, it is the duty of the executive to apply its mind to that failure and to take corrective measures, to take remedial measures—change the guard here, do this, do that and other things. I am really surprised—and that is my answer to what Mr. Upendra was saying—how do you arrive at this decision? You only look at this. Let anybody say that this is not in its nature a secret thing and I should think that there should be a demand to disclose this aspect of the report —what is the security system, where it failed, what are the remedial measures? For whose benefit? For those who add to the fire.

SHRI JASWANT SINGH (Rajasthan): That is unfair. (*Interruption*)

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am talking about its effect, its impact. I am not saying that. I can't. I am sorry. I did not say that. I don't say that. I am only talking of the impact of their debate, the effect of their debate, if there is a disclosure of this nature. I am not doubting their intentions at all. They are all honourable Members and I respect them all because they are men of honour.

Then we come to the other interest and when we come to this we have the parameters laid down, namely, sovereignty and integrity of India, the security of the State, friendly relations with foreign States, and in the public interest it is not expendient to lay it before the House.... (*Interruptions*).....

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Please have an eye on time also.... (*Interruptions*)... Don't answer interruptions.

SHRI NIRMAL CHATTERJEE: All are present to hear you.

SHRI K. MOHANAN: Only because of you we are here.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You are welcome

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): Answer the last part?

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Which is the last part?

SHRI GHULAM RASOOL MATTO: Public interest ....*(Interruptions)*....

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Don't answer interruptions. Please continue.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Sir, I am quite sure the honourable Minister would reply to all these things but since he and I belong to the same profession, I thought I could also take this opportunity of dealing with the matter.

SHRI A.G. KULKARNI: You are making intelligent points. That also we should hear.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Now, in the first instance, take any one of these. In fact they are not a conjunctive. They are all disconjunctive in the sense that if the disclosure is not in the interest of integrity and sovereignty, it can be withheld. If the disclosure is not in the interest of the security of the State, it can be withheld. If it is not in the interest of friendly relations, it can be withheld. Or, in public interest it can be withheld. This "public interest" is wide enough. Since my friend from Kashmir has asked me, let me reply to him. Public interest is wide enough to cover serious and aggravated forms of public disorder which are calculated to endanger the security of the State and also other breaches of peace of purely local significance which endanger the public order. Therefore it does not have that wide ramification but, even if it is going to cause local disturbances resulting in public disorder, then it is in public interest. I will give you the authority of the Supreme Court, if you want. But I think these are the parameters. I have no doubt that it is not an unbridled power, it is not an unguided power, it is not an unchannelized power. It has all the guidelines, it has all the norms to follow and I do not see that it suffers from any such defect in fact. I will say it was an integrated scheme which should have been there in 1952 itself—appointment of a commission and laying the report before the House. What I find is that in 1961 when the Mahajan Commission reported on the boundary dispute between Karnataka and Maharashtra, even that report was not placed on the Table of the House.

SHRI A.G. KULKARNI: The Mahajan Commission report was placed on the Table of the House.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: No....*Interruptions*)....So, the point which I am making is, you cannot compel a Government to appoint a commission of inquiry. That is why during the Janata regime, when there were two of the Prime Ministers, we made many efforts to get inquiry commissions appointed to go into serious charges and they resisted. There is not compulsion. It is only a violation of the Government to appoint a commission. You cannot force the Government to accept a report. As I said, it is a rational step, a step in case of satisfaction of those parameter—integrity and sovereignty of the country, friendly relations with foreign States, public order and all that. I think it is necessary as it is necessary to hold the proceedings in camera. It is necessary in the larger interest so that we preserve the unity and integrity, so that we preserve our democracy, so that we make our society more free and more open. We have a limitation. It should not inflame the passions of the people. But I hope a time will come when that notification will have to be cancelled in future, and people will not be reprived of what has been said now. But today is not the time. And to that extent, the remedying of the deficiency in the Commissions of Enquiry Act in 1986 is welcome.

Thank you.

श्री सत्य प्रकाश मालवीय : माननीय उपसभाध्यक्ष महोदय, 26 जनवरी, 1950 से लेकर 31 दिसम्बर, 1984 तक 348 अध्यादेश इस संसद में प्रस्तुत किये गये थे और सन् 1986 का यह छठा अध्यादेश है। उन तारीखों में मैं नहीं जाना नहीं चाहता। लेकिन आजतक जितने भी अध्यादेश पारित किये गये राष्ट्रपति द्वारा उनमें यह पहला अध्यादेश ऐसा है जिस पर जिस दिन राज्य सभा स्थागित की जाती है अनिश्चित काल के

[श्री सत्य प्रकाश मालवीय]

लिए, राज्य सभा का सत्रावसान नहीं होता ठीक उसके दूसरे दिन राष्ट्रपति महोदय भारत सरकार की सलाह पर अध्यादेश पर हस्ताक्षर करते हैं । जो मंत्री महोदय ने अपना वक्तव्य दिया है उसमें भी इस बात की सफाई नहीं की गई है कि क्या इसके कारण थे, क्या ऐसी आवश्यकता आ पड़ी कि उनको यह अध्यादेश जारी करना पड़ा और इस कानून में संशोधन करना पड़ा ? इसलिए मैं संविधान के अनुच्छेद 123 की ओर आपका ध्यान अनुच्छेद 123 में इस बात का प्रावधान किया गया है :

> "If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require."

एक तो मैं यह जानना चाहता हूं कि क्या ऐसी व्यवस्था थी, क्या ऐसा कारण था कि अध्यादेश के जरिये ऐसे कानून में संशोधन करना पड रहा है जिसमें सन् 1971 में संशोधन करके प्रावधान किया गया था ? समय-समय पर संसद या लोकसभा के अध्यक्षों ने, चाहे वह मावलंकर हों, आयंगर हों हुकमसिंह हों ढिल्लो साहब हों और या आज के डा. बलराम जाखड़ । इन्होंने बराबर इस बात की व्यवस्था दी है कि अध्यादेश के जरिये सरकार को चलाना अलोकतांत्रिक है और जो लोकतंत्र की मान्यताएं हैं उनके विरुद्ध है । मैं सब व्यवस्थाओं की ओर ध्यान आकर्षित न करके केवल तीन व्यवस्थाओं की ओर ही ध्यान आकर्षित करना चाहूंगा ।

पहली व्यवस्था थी, हमारे जो प्रथम अध्यक्ष थे लोक सभा के श्री मावलंकर, उन्होंने 22 जनवरी, 1952 को यह व्यवस्था दी थी:

> "I myself do not like promugation of Ordinance. It is only in extreme cases that an Ordinance should be issued. The ordinary rule should be No Ordinance."

कुछ देर पहले माननीय कृषि मंत्री डा. ढिल्लों यहां उपस्थित थे, 16 नवम्बर, 1971 को जब डा. ढिल्लों लोकसभा के अध्यक्ष थे तो उन्होंने व्यवस्था दी थी :

> "I agree with you that so many Ordinances should not have been issued....I Personally think it is not a light matter to be ignored. Certain observations have been made by my predecessor Shri Mavalanker based on very sound judgment. I would invite the attention of the Government to see that there is real emergency or urgency justifying the issue of an ordinance."

तो मैं यह कहना चाहता हूं कि आजकल न तो कोई ऐसी इमरजेंसी थी और न कोई ऐसी माकूल व्यवस्था थी जिसके कारण यह अध्यादेश लाया गया । जो हमारे वर्तमान अध्यक्ष डा. बलराम जाखड़ जी हैं, उन्होंने 17 नवम्बर, 1980 को व्यवस्था दी थी :

> "My distinguished predecessors have made observations in regard to these matters from time to time in the past. They did not approve of the issue of Ordinances on the eve of Parliament Session. I agree with them."

तो मान्यवर, मैं यह कहना चाहता हूं कि जब राज्य सभा सत्र में थी और सभा केवल अनिश्चित काल के लिए स्थगित की गई थी तो ऐसी स्थिति में यह अध्यादेश ला करके सरकार ने न केवल लोकतंत्र मर्यादाओं का हनन किया है, बल्कि संसद और संसद के जो सदस्य हैं उनके अधिकारों का भी हनन किया है ।

सन् 1952 में कमीशन आफ इंक्वायरी एक्ट पारित किया गया था और सन् 1952 से लेकर सन् 1971 तक मल हालत में कमीशन आफ इंक्वारी एक्ट के जरिए इस देश का काम होता रहा । लेकिन उसके बाद सन् 1968-69 में एक जाइन्ट सेलेक्ट कमेटी बनाई गई । इसके साथ-साथ इस संबंध में हमारे देश का जो विधि आयोग है, ला कमीशन है, उनकी संस्तुतियों के आधार पर नवम्बर 26, 1971 को एक संशोधन विधेयक तत्कालीन केन्द्रीय मंत्री श्री राम निवास

मिर्धा जी ने प्रस्तुत किया । अपने उस विधेयक को इंट्रोड्यूस करते समय संस्तुतिओं को पेश करते समय लोक सभा में उन्होंने जो संक्षिप्त भाषण दिया था उस ओर मैं ध्यान आकर्षित कराना चाहता हूं क्योंकि उसको यह नहीं लग रहा है कि क्या कारण है कि आज यह संशोधन विधेयक लाया गया है । 26 नवम्बर, 1971 को श्री राम निवास मिर्धा ने कहा--

> "There were certain difficulties and deficiencies experienced in the working of the Commission of the Enquiry Act, 1952 and the matter was referred to Law Commission for suggesting suitable amendments to the Act. Taking into account the importance of the Act and the need for a proper system of enquiry, the Law Commission, Sir, undertook a comprehensive examination of the entire Act and made a number of recommendations in the 24th Report for the revision of the Act in several respects. The main recommendations of the Law Commission had generally been accepted by the Government after considering the views of the State Governments, Union Territory administration and the Ministries of the Government of India and to give effect to the accepted recommendation of the Law Commission the Commission of Inquiry Amendment Bill 1969 was introduced in the Lok Sabha on the 12th November, 1969 and was later on referred to a Joint Committe of Parliament. The Joint Committee submitted a report to both Houses of Parliament on the 9th November, 1970. However, on the dissolution of the Fourth Lok Sabha, the Bill as reported by the Joint Committee lapsed the present Bill seeks to give effect to the provisions of the Bill modifications which appear to the Government to be necessary."

सन 1971 से लेकर 13 मई, 1986 तक कमीशन आफ इन्क्वायरी एक्ट के माध्यम से काम होता रहा । इस बीच सरकार की तरफ से ठक्कर आयोग बैठाया गया जिसके टर्म आफ रेफरेन्स को मैं पढ़ना चाहूंगा । इसको पढ़ना बहुत जरूरी है-

> "(1) The sequence of the events leading into the assassination of Shrimati Indira Gandhi and the persons or agencies responsible for the assasination;
>
> (2) To point dereliction of duty in regard to the assassination;
>
> (3) Deficiencies or lapses inproviding medical attention to the late Prime Minister; and
>
> (4) Deficiencies in changing the security system."

मान्यवर, जब यह ठक्कर आयोग बैठाया गया तो सारे देश की जनता ने यह मांग की थी और सरकार ने इस मांग को स्वीकार करके यह ठक्कर आयोग बैठाया । 19 नवम्बर, 1985 को ठक्कर आयोग ने अपनी अन्तरिम रिपोर्ट तीन सौ पृष्ठों की प्रस्तुत की और उसमें कहा कि जो तेईस बड़े बड़े अधिकारी थे उन्होंने अपने पदों की जिम्मेवारियों का निर्वाह नहीं किया । और भी बहुत-सी बातें उस अन्तरिम रिपोर्ट में कही गई । उसके बाद फरवरी, 1986 को ठक्कर आयोग ने अपनी अन्तिम रिपोर्ट प्रस्तुत कर दी । इसी प्रकार से अक्तूबर, 1984 में दिल्ली में दंगे हुए तो उनके संबंध में कुछ पार्टियों पर और नेताओं पर आरोप लगाये गये । इनकी जांच करने के लिए रंगनाथ कमीशन बनाया गया । ऐसी स्थिति में मैं यह जानना चाहता हूं कि क्या ऐसा तो नहीं है कि केवल ठक्कर आयोग की रिपोर्ट पर पर्दा डालने के लिए और रंगनाथ कमीशन की रिपोर्ट पर पर्दा डालने के लिए इस संशोधन विधेयक के माध्यम से उस रिपोर्ट को रोकने का काम यह सरकार करने जा रही है ?

मान्यवर, एक बात की ओर मैं ध्यान दिलाना चाहता हूं । हमारे मित्र माननीय आडवानी जी ने भी जिक्र किया है, चर्चा की है ।

मान्यवर, मैं इंडिया टुडे की शुरू की चार लाइनें कोट करना चाहता हूं:

> "Commissions of Inquiry are supposed to uncover the truth and the

[श्री सत्य प्रकाश मालवीय]

truth on public issues is supposed to be made public in an open society. The last month's ordinance permitting the Government to keep secret the findings of any Commissions of Inquiry grossly violates this fundamental principle and deserve to be condemned and opposed in Parliament."

मान्यवर, अंग्रेजों के जमाने में इस देश में जालियावाला बाग कांड हुआ था । इस कांड के बारे में पंडित मोतीलाल नेहरू और पंडित मदन मोहन मालवीय इन लोगों ने वहां जाकर अपनी रिपोर्ट प्रस्तुत की थी और उसके बाद हुकूमत ने हंटर आयोग बिठाया था । हंटर आयोग में श्री एम. वी. सीतलवाड़ के पिता सर चिमनलाल सीतलवाड़ एक सदस्य थे । लेकिन अंग्रेज हुकूमत ने भी, जब कि हम लोग गुलाम थे, हंटर आयोग की जो रिपोर्ट थी, उस रिपोर्ट को प्रस्तुत किया और साथ ही साथ सर सीतलवाड़ ने आयोग की रिपोर्ट के साथ जो मतभेद व्यक्त किया था, उसको भी उस जमाने में प्रस्तुत किया गया था ।

मान्यवर, अंत में एक बात कहकर मैं समाप्त करूंगा । शाह आयोग की यहां पर चर्चा की गई है । जस्टिस शाह सुप्रीम कोर्ट के जज थे और इमर्जेंसी में हुई ज्यादतियों पर अपनी रिपोर्ट देने के लिये यह कमीशन बिठाया गया था और तदनुसार जस्टिस शाह ने अपना फैसला दिया । लेकिन जब श्रीमती इंदिरा गांधी हुकूमत में आई तो उन्होंने जस्टिस शाह आयोग, शाह कमीशन की जो फाइंडिंग्स थी, उन फाइंडिंग्स को जब्त कर दिया, और आज इस देश का कानून है कि अगर शाह कमीशन की प्रतियां किसी के पास होंगी तो उसके खिलाफ कानूनी कार्यवाही की जायेगी । तो मान्यवर, मैं यह कहना चाहता हूं कि सारी दुनिया की आंखों पर पर्दा पड़ा हुआ है कि श्रीमती इंदिरा गांधी की हत्या किन परिस्थितियों में हुई, किन लोगों ने श्रीमती गांधी की हत्या की और जिस ओर श्री दीपेन घोष ने भी इशारा किया कि कुछ लोगों ने यह आरोप लगाया है कि प्रधानमंत्री के हत्यारे प्रधानमंत्री के घर में मौजूद थे और कुछ लोगों ने इस बात का आरोप लगाया कि प्रधानमंत्री की हत्या में सी.आई.ए. का हाथ था । जब कि दिल्ली हाई कोर्ट, दिल्ली उच्च न्यायालय में सतवंत सिंह ने अपनी याचिका में इस बात की प्रार्थना की थी और दिल्ली उच्च न्यायालय केन्द्रीय सरकार. . . . . .

SHRI P. CHIDAMBARAM: I would most humbly request the hon. Member that since a referred trial appeal is pending in the High Court and the matter is subjudice, it would not be fair to the administration of justice to refer that case.

SHRI SATYA PRAKASH MALAVIYA: These are facts Sir. I am not commenting on the petition before the High Court. I am only saying Sir that Satwant Singh had moved in the Delhi High Court that the Government of India should be directed to publish the report of the Thakker Commission and that petition is pending. Mr. P. N. Lekhy was arguing the case and on just one fine morning, I saw the ordinance in the paper and therefore my submission is that the learned Minister should withdraw the ordinance and he should take the opposition into confidence and only then, some amendments should be brought.

SHRI BAHARUL ISLAM (Assam): Mr. Vice-Chairman, Sir, I propose to be very brief because most of what I had to say have already been said by some of my colleagues, particularly by Mr. Madan Bhatia and Mr. Bhandare I can also tell you that I was listening to the speeches of the Leaders of the Opposition with rapt attention, namely, Mr. L. K. Advani, who made a powerful speech apparently powerful. Mr. Dipen Ghosh, Mr. M. S. Gurupadaswamy and Mr. P. Upendra. But my impression is: they made the argument as if the Government had come on a Bill deleting either Section 3 or sub-section 4 of Section 3. If that were so, then their speeches would have been very powerful and very valid and they could not have been assailed but that is not the thing here possibly Mr. Chidembaram will come forward and say that what you say, I entirely agree because the burden of their speeches was that ours is a democratic country; ours is an open society. This Thakkar Commission or any

commission for that matter, is constituted for a particular purpose, to collect facts of certain incidents, to fix the responsibilities of persons, etc., etc. Of course, the people in a democratic country are entitled to know the findings made by a commission of inquiry and we being Members of Parliament, who are the representatives of the people, certainly are entitled to know the findings of a particular commission. This proposition, I believe is not challenged by Mr. Chidambaram. I entirely agree with them. But Mr. Chidambaram is saying, "We are carving out four areas." In other words, this sub-section (5) which is sought to be added by this amendment is really a proviso to sub-section (4). By the earlier amendment of 1971, the Government was directed to place the report of an enquiry commission before the appropriate legisalture Now, to my mind, this proviso or this new clause should have been there already. But Mr. Chidambaram has not said that he has become wiser. Possibly he has said that we have gained more experience. At that time possibly the Government had not got that experience or had not encountered such an incident. Now they are encountering or experiencing new incidents which have compelled them to put this proviso, which is absolutely essential in my view. I will give a few illustrations and place them before the hon. Members of Parliament and request them to judge for themselves whether this Bill is essential or not essential. I will not at all dispute their contention, namely that in a democratic country, we have the right to know the findings of a particular commission of inquiry, but this right is not absolute. As Members of Parliament do you think you have absolute freedom of speech here in Parliament or outside? No. You have your freedom of speech here, but can you criticise the conduct of a judge? You cannot. The Constitution has prohibited you; the rules of procedure of this House and the other House have prohibited you. These rules do not allow you to criticise the conduct of a judge Therefore, you may have certain rights, but there are bars also.

[Mr. Deputy Chairman in the Chair]

You have the freedom of speech, but do you have the freedom of speech to defame me? You have the freedom of exercising your religion, but do you have the freedom of exercising your own religion in such a manner that the people of other religion are offended? ,There are bars. Similarly, the Government has come out with this Bill, carving out four areas and saying: we accept your argument in toto, but in four spheres we claim exception, namely, (1) sovereignty and integrity of India; (2) security of the State; (3) friendly relations with foreign states and (4) public interest. These things are there.

SHRI ATAL BIHARI VAJPAYEE: Everything is covered.

SHRI BAHARUL ISLAM: Now I will give you a few illustrations. Mr. Matto raised the point as to what is public interest. I will place a few illustrations before you and request you to judge for yourselves whether any such report should be placed before the legislature. For example, in 1962 a commission of inquiry was constituted in Assam to go into certain disturbances. Some houses were burnt and some persons were killed. There was some sort of a communal disturbance on the basis of language. A commission of inquiry was constituted. The allegation was that a certain leader of the majority community, who was holding a high position, delivered some speeches in some meetings, and after the meetings were over, in those villages the houses started burning during the night. implying that indirectly he was inciting the audience to set fire to the houses of the minority community. The commission of inquiry went into it. Ultimately the allegations could not be proved. When the report of commission of inquiry was ready—at that time there was no compulsory provision in the Act: this was in 1962—the Government thought that it would be advisable not to place the report before the Assembly for the reason that the minority comments which made the allegation which could not be proved, might be in jeopardy if the report was published Then the Government took into confidence the leaders of the minority community also. They agreed Now, suppose that report was placed, then the aggrieved majority community might think, well, you irresponsibly made these allegations, accused our revered leader, you could not prove

[Shri Bahrul Islam]

them. Possibly their life would have been in great danger. Similarly, the Thakkar Commission. I was not a lawyer nor was I a judge in that. When the Thakkar Commission of Inquiry was appointed, you know the circumstances, everybody knows the circumstances. Suppose the finding is that a few persons of a minority community—please keep in mind the word 'minority community'—are responsible for the conspiracy and killing of the revered leader the Prime Minister of our country. If this be so, if that report is placed before the House, then it becomes public, and then you can very well imagine the condition of that minority community. They will be wiped out. That is one. Secondly, there will be witnesses who must have given evidence in camera. If the names of the witnesses also come out in the inquiry report, you can very well imagine the condition of those persons...

SHRI JASWANT SINGH: If you could do me the great courtesy of yielding for a minute...

SHRI BAHARUL ISLAM: Yes.

SHRI JASWANT SINGH: The essence of Juctice Islam's argument is that a certain part is carved out and those parts relating to sovereignty, relationship with foreign countries, security of the nation and public interest are listed in that and he is now illustrating public interest. Before he concludes, I would request an eminent jurist like Justice Islam to so categorically say if there is anything at all left after these four areas have carved out, after the provisions of these four areas what is left.

SHRI BAHARUL ISLAM: Yes, there are certainly. For example, economic offences. There are commissions of inquiry; under the Commissions of Inquiry Act not only communal disturbances but also economic offences are dealt with. The Mundhra Commission was there...

PROF. C. LAKSHMANNA (Andhra Pradesh): How does that preclude the possibility of...

MR. DEPUTY CHAIRMAN: Please don t interrupt.

SHRI BAHARUL ISLAM: What I am submitting is that there will be commissions like the Mundhra Commissions.... *(Interruptions)* Apart from that—I have given a hypothetical example—I have given you the case of Assam or the Thakkar Commission. I have given you the hypothetical example.. *(Interruptions)* If that be so, if the report of the commission is published, what will be the condition of that particular community?

SHRI DIPEN GHOSH: You have cited economic offences, that certain economic offences could be construed as public interest and certain not. It is all right. But suppose a commission, having gone into the affairs of Reliance, has found that the ex-Prime Minister was involved in it, will it also be published?

MR. DEPUTY CHAIRMAN: What is the relevance?

SHRI BAHARUL ISLAM: Therefore, my submission is in my mind the Government should have added the sub-section (4) in 1971 itself. But presumably, as Mr. Chidambaram has suggested, at that time we had not that experience; we have now encountered such an instance, and, therefore, we feel it necessary that such a proviso should be there. Therefore, in their wisdom they have come forward with this amendment and this is most welcome.

SHRI A. G. KULKARNI: Mr. Deputy Chairman, Sir, I am not going to take the time of the House by repeating—the arguments made on this side or on that side. Sir, I am coming to the basic points.

Sir, I was happy to learn something from Shri Bhatia, from Mrs. Natarajan, and from some of the speeches that were made on that side and from

out side also. (*Interruptions*).

AN. HON. MEMBER: Why do you say, "from our side also"? (*Interruptions*).

SHRI A. G. KULKARNI: I am giving you compliments; I am paying compliments to your side. At least be happy about that. It is not that I always criticise you. You are wrong there.

Sir, the crux of the problem seems to be this as I have now come to learn after hearing the speeches from the Treasury Benches and also after hearing the Minister, the young Minister, who made a very lucid and short speech, and he has said that he has brought forward this Bill for seeking the permission of Parliament. Sir, I have got certain difficulties in understanding this. I am not a lawyer and, therefore, I do not understand the legal language. I am a politician and so, I can take a political view of what all these speeches mean to me as a politician.

Sir, we have heard the Minister. Whatever the Minister might have said, I have tried to find out what the basic point is and the basic point seems to be the point of political morality in this matter. Sir, this amendment has been passed by the Lok Sabha. We may be making speeches here and trying to convince the Government. But they are not going to change and I also know the fate of the amendments that we have moved. But political morality demands that Parliament and the Members of Parliament should have certain basic rights and they have certain basic rights. Mr. Bhandare has said—I think he has gone now—that he is frustrated because there are no rights for Members of Parliament. In my whole life in Parliament, Sir, I have found that there is no inhibition to speak here and, therefore, I do not know what sort of frustration he is having to speak here. We can speak anything we like here and nobody bothers. And, Sir, even some Ministers from that side have spoken like that during the last week. You can speak anything here with no holds barred. We can carry on like this. No problem. Now, Sir, the Minister has said that he is going to bring forward something. There is one point which I would like to bring to his notice. Take a small example. I think Mr. Advani gave the example of the report of the Public Undertakings Committee. They are also public and they are placed on the Table of the House. Perhaps, Sir, old Members on this side and old Members on that side might remember the famous case of Kuo oil deal which was discussed here. It was before the Committee on Public Undertakings. Sir, our main objection was not to giving the right to the executive to issue any fiat or ordinances. But, in the Kuo oil case, it was the Secretary who, for three or four years, was withholding a particular file from the Members of the Committee on Public Undertakings and, ultimately, it was the Members on the Opposition as well as on the ruling party side who persisted in their demand and the file had to be brought finally—I do not want to name the person—from the then Prime Minister's house. This was the fact. So, Sir, here I would like to invoke your good sense and your judgment, particularly your political judgment in this context. Sir, this was the Kuo oil. Now, the Minister has stated and my friends have stated that the matters will be leaked. What will happen now? You don't take it that the Thakkar Commission report was typed by Justice Thakkar and sent or handed over to the Home Minister. Don't take it that way. Anything can leak. There are some interested parties in the Government also who want to leak. Don't take it that it is the opposition who is interested in leaking. I am not repeating the whole thing again. They have leaked certain matters. The whole point is that there was a third person who shot Mrs. Gandhi. Then, Sir, there is a startling news. I only had it two days back. BBC showed that on the television screen. It means that what we are demanding is that you bring that report on the floor of

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the House so that we can reply to the English people that we know how Indira Gandhi was killed. We are more interested in knowing how she was killed. Was there any plot? That is what I call political morality.

I think, Sir, that in the Keshavanand Bharati's case—I am not a lawyer; with due respect to Madam and Justice Bahurul Islam what I understand is...

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sir, I want to make one submission. A full Bench of the High Court is hearing the appeal of the accused persons and a very responsible lawyer, former Vice-President of the B.J.P., is defending the accused persons in appeal. He is the Defence Counsel. This matter is sub-judice. Nothing should be said about the merits of the case.

SHRI A. G. KULKARNI: I am mentioning about Keshavanand Bharati's case. (*Interruptions*) The Minister of State has objected to my saying something about it. It has already gone on record. You need not worry. Now, it is already a part of the records. Others have spoken about it.

SHRI H. R. BHARDWAJ: I have made a submission. Why are they objecting to it?

SHRI A. G. KULKARNI: I was stating about the Keshavanand Bharati's case. Mr. Bhardwaj will be the right person to say whether I am correct or not. The Supreme Court came to the conclusion that by two-third majority the basic feature of the Constitution cannot be altered. Am I right Mr. Bhatia? The basic feature of the Constitution cannot be tampered by even two-third majority. The basic feature of the Constitution is a derived feature. I have got a right of information. If you want to withhold that right of information, the result will be that all the *bakwas* will be shown on the television. For heaven's sake, don't do that.

SHRI MADAN BHATIA: I would like to correct the hon. Member. If the right to information is a fundamental right on which Members on this side are insisting, then what are they clamouring about. The fundamental right is not being changed. Then they should resort to the fundamental right and ask for the production of the report. It is just because it is a statutory right. It is not a fundamental right or the right of access to public document.

SHRI A. G. KULKARNI: Whatever argument he is giving, I am only saying that it is derived....

SHRI MADAN BHATIA: Perhaps he has not understood it.

SHRI A. G. KULKARNI: I did not understand it perhaps. If I interpreted it correctly, it is like that. It is a derived right. I would request Mr. Bhatia that we are politicians. He is a lawyer. He can make his finer points in the Supreme Court. He has got ample opportunities to fight in the Supreme Court. We are politicians. Here we are politicians making our points. So, the point I want to make out is this. Sir, my learned friend, Mr. Bhatia made a point that it was on the intervention of Mr. Palkhivala that this amendment was introduced in 1971. It was the same Mr. Palkhivala....(*Interruptions*). Why are you fighting between yourselves?

MR. DEPUTY CHAIRMAN: You please address the Chair.

SHRI A. G. KULKARNI: Sir, at my back, there is a back-fire. So, I have to look back whether I am going to be affected. Sir, my point is this. My learned friend has said that at the instance of Mr. Palkhivala this amendment was introduced. And he again said that the same Mr. Palkhivala appeared on behalf of the Government in the Delhi High Court. Sir, may I bring to the notice of Mr. Bhatia and his tribe, with due humility, that the personal commitment to an issue or a personal conviction is one thing,

and the professional business is another thing. A lawyer may appear for a client who has murdered. But that does not mean that he is a party to that murder. (*Interruptions*) Bhatiaji, Mr. Palkhivala for some consideration might have appeared on your behalf. He also appeared on behalf of Mrs. Indira Gandhi. That does not mean that he is convinced of that. It is his professional business. And you also appear like that. What is wrong there? So, Sir, Mr. Bhatia's instance is really out of context.

The last point which I want to make is this. Sir, I am a novice. I am not a lawyer. I am only making out points. Sir, I would only request the Government that these are certain points which require consideration. Even if you are going to bring this, when the law is passed and you do not want to place certain reports, you say that it will be brought. What will be brought? It is your two-thirds majority that will roll us, that will stop us from getting our fundamental right guaranteed for the information. Don't take that 1977 will not be repeated. It is not very long. So, you will also have to take a view. If you sit on the other side, we were also sitting with you. And there is a chance. Therefore, while you pass any legislation, the entire gamut of its effects for the future generation has to be considered. Hence, Sir, I want to oppose the passing of this Bill on the very ground of political morality and pragmatic commonsense of the politicians in the ruling party or the politicians in the Opposition. I have done, Sir.

SHRI PAWAN KUMAR BANSAL: Mr. Deputy Chairman, Sir, the laws enacted by the Legislatures are directed to problems made manifest by experience. In our changing, moving and dynamic society, we do not expect the laws to be static. And as the laws represent the collective will of the poeple through their representatives in the various legislatures, we do expect the laws to change with the changing times. Unfortunately, our experience of the past has been that the freedom guaranteed by the Constitution has often been equated by various people with a licence to indulge in anything which may be detrimental to the interest of the society or of the State. Sir, any document to the press both domestic and forebrought before the Parliament be-

6 P.M.

comes a public document. It is open ign...

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): It is 6 o'clock, Sir. We can continue this discussion tomorrow. (*Interruptions*).

SHRI NIRMAL CHATTERJEE: Sir, we can continue it tomorrow. Lok Sabha debated it for three days. The Leader of the House is present. Permit the opposition to delay the passing of the Bill by one day only. We can discuss it tomorrow. You have the majority. You can get it passed. Have this much of grace. Give us some time to discuss it. Let us adjourn the House now after he finishes. We want to speak on the amendments also.

MR. DEPUTY CHAIRMAN: Let me have a word. In the Business Advisory Committee when we discussed this matter earlier, we decided that normally the House will rise at six o'clock but if necessary we will sit beyond six p.m. Today only three or four more speakers are there and then the voting and amendments are the main thing. I suggest that if the House agrees we should continue this debate.

SHRI DIPEN GHOSH: Mr. Deputy Chairman, Sir, I have got a submission and an appeal. We are told by the Minister that even by this Bill the Parliament is being given the right to decide whether to suppress or to disclose the reports of certain commissions. That means they are all arguing from Mr. Madan Bhatia to Mr. Baharul Islam, that we are not being denied of our right. At least give us the right of discussing this Bill in detail and let us not be hurri-

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ed. The other House was given three days' time. It was debated for three days there. It is not a question of only three or four speakers being there. Minister has to reply. Then Advaniji will have to speak. Then there are amendments and movers of amendments have the right to speak on the amendments. Naturally Sir, it will take time. There is no hurry. Let us adjourn at 6 o'clock today and tomorrow we will discuss it and pass it.

THE LEADER OF THE HOUSE (SHRI VISHWANATH PRATAP SINGH): Sir, you have already expressed yourself that in the Business Advisory Committee we have decided on a certain procedure, and the amount of time that we will spend on it and as only a few speakers are now left, I would request the leaders on the other side that when there is pressure of work, we have to sit late hours and we will be passing it. I do welcome what you have said.

SHRI LAL K. ADVANI: Mr. Deputy Chairman, Sir, may I point out one more thing which perhaps Mr. Ghosh had not in mind, that is because of the original phrasing of the Commissions of Inquiry Act and because of the wording of the present Ordinance so far as the approval of the notification is concerned that will go only before the Lok Sabha and it will not come before this House. And, therefore, it is all the more imperative that this House be given a full opportunity to discuss this particular Bill at length. I feel that though there may be only three or four speakers more, but even the amendments need to be rationally explained and therefore, I would request the Leader of the House to agree to our request from the Opposition to hold it over till tomorrow. We will discuss it. It has been a very good debate. The level of debate has been very good. It will be in the fitness of things if the discussion continues tomorrow. You will certainly have the Bill passed.

संसदीय कार्य मंत्रालय में राज्य मंत्री (श्री सीताराम केसरी) : मेरा निवेदन यह है कि जहां तक हमारी तरफ के जो वक्ता हैं उनको मैं विदड्रा कर लेता हूं । आप जितनी देर तक चाहें बोलकर अपने भावों को व्यक्त कर दें, इसके लिए हम तैयार हैं । हम अपने वक्ताओं से निवेदन करेंगे कि वे न बोलें ।

श्री दीपेन घोष : आज और कल पास करने में क्या फर्क है ?

श्री सीताराम केसरी : हम बैठेंगे आपकी बातों को सुनने के लिए ।

MR. DEPUTY CHAIRMAN: Business Advisory Committee has allotted one day for this business. All the parties have been given time except three more Members who have to speak. There is still time and I call upon Mr. Bansal to speak.

SHRI K. MOHANAN: Don't bulldoze, please.

SHRI M. S. GURUPADASWAMY: You referred to Business Advisory Committee. As far as possible, we ourselves cooperate in almost all the debates. But there is a difference today. This is a very important debate, according to us. Business Advisory Committee cannot, by nature of things, take into consideration all the implications of a particular measure. Therefore, we should not take shelter under Business Advisory Committee always. So far as we are concerned, we are cooperating with the Treasury Benches; but in this matter, it is so important and many of us want to speak also on the amendments which will come up. It is going to be a very long bedate. I would like you to see that this debate is not hustled through. Tomorrow we can debate further and complete this discussion. I appeal to the Leader of the House to concede to our request and the House may be adjourned.

SHRI PARVATHANENI UPENDRA: I also support this contention. Debate must be postponed.

SHRI VISHWANATH PRATAP SINGH: I would very readily agree to what the leaders of the Opposition are saying. We do accommodate each other; but the Minister of Parliamentary Affairs informs me that there is a lot of work tomorrow and it will not be possible to get through the whole business. That is the difficulty. I would request that we might spend some more hours today and finish it.

MR. DEPUTY CHAIRMAN: So I appeal to all the Members, especially Members of the Opposition, to cooperate. Let the debate continue and I call upon Mr. Bansal to continue.

PROF. C. LAKSHMANNA: This is an important Bill; there have been occasions in the past; we want people to listen.

SHRI M. S. GURUPADASWAMY: Again I request that we should adjourn the House now and have further discussion tomorrow.

SHRI PARVATHANENI UPENDRA: We are going to hang ourselves, at any rate. Why you want us to hang today itself?

SHRI DIPEN GHOSH: I appeal to the Leader of the House to be as generous as he is to certain sections of the community outside. He gives relief; he doles out relief to them. Atleast, he may dole out relief to us. It is 6 o'clock already.

SHRI ATAL BEHARI VAJPAYEE: We are not opposed to sit for long hours but we want adequate and effective debate on this Bill. I do not understand why the things are being hustled. Heavens are not going to fall if we continue with the debate tomorrow. Do you want our cooperation or not? This is not the way to seek our cooperation, if the majority party behaves like this.

(*Interruptions*)

SHRI VISHWANATH PRATAP SINGH: May I say with all respect to Atalji that his mental prowess is not at all diminished after 6 p.m. It is as bright now as it would be tomorrow. (*interruptions*)

PROF. C. LAKSHMANNA: Withdrawal of Members from this side or that side will not solve the problem. (*Interruptions*)

SHRI K. MOHANAN: All Opposition leaders are unanimously requesting you...

(*Interruptions*)

SHRI DIPEN GHOSH: This is not a very important thing. The Leaders of all Opposition parties are unanimously requesting. It is a small request. The debate can be adjourned till tomorrow and we can take it up tomorrow. We can even part with the lunch hour and we can complete it after lunch. What is the harm? Why are you making it a prestige issue?

SHRI VISHWANATH PRATAP SINGH: There is a lot of work.

SHRI DIPEN GHOSH: What is that lot of work? We know.

SHRI VISHWANATH PRATAP SINGH: That is the real difficulty. (*Interruptions*)

SHRI DIPEN GHOSH: It proves our apprehension. When we were being told that Parliament will be taken into confidence to decide what report of which Commission will be suppressed or disclosed, it proves our apprehension that this is how the majority party will behave.

SHRI VISHWANATH PRATAP SINGH: May I propose a compromise? I will plead with the Leaders of Opposition that we may go on for another hour and we can continue tomorrow. Let us have it midway. (*Interruptions*)

MR. DEPUTY CHAIRMAN: Now Shri Bansal please.

SHRI PAWAN KUMAR BANSAL: Mr. Deputy Chairman, Sir,...

(*Interruptions*)

SHRI M. S. GURUPADASWAMY: We can give up the lunch hour tomorrow.

SHRI PARVATHANENI UPENDRA: What is the real difficulty? I cannot

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follow. Heavens are not going to fall if you do not pass it today. (*Interruptions*)

SHRI NIRMAL CHATTERJEE: Normally, Monsoon Session goes for five weeks. This time, the Session has already been curtailed. On the top of it, you are curtailing our rights and you are not permitting us to delay the passing of the Bill even by a day. Is this the kind of response?

SHRI VISHWANATH PRATAP SINGH: We can continue tomorrow. That point has already been decided. Why are you worked up? We have decided that we will continue the debate tomorrow. (*Interruptions*)

SHRI DIPEN GHOSH: Mr. Leader of the House, this is not a fish market. We want adjournment at 6 p.m. You are offering at 7 p.m. What is this? What is the bargain (*Interruptions*).

SHRI NIRMAL CHATTERJEE: We are worked up for only one reason. We expect the Leader of the House to be somewhat more reasonable. (*Interruptions*)

श्री वीरेन्द्र वर्मा (उत्तर प्रदेश) : माननीय नेता सदन से मैं भी प्रार्थना करना चाहूंगा कि कल का जो लंच पीरियड है उसको ले लें और यह सभी के लिए सुविधाजनक रहेगा । कोई कष्ट की बात नहीं होगी । इतनी बात आपको स्वीकार कर लेनी चाहिए । (व्यवधान)

श्री सत्य प्रकाश मालवीय: मैं आप लोगों से भी बहुत ज्यादा चिल्ला सकता हूं । (व्यवधान) कम रखिये इसको । (व्यवधान)

SHRI B. SATYANARAYAN REDDY: What have you decided, Mr. Deputy Chirman? (*Interruptions*).

MR. DEPUTY CHAIRMAN : After hearing your opinion, I have given my opinion that the House shall continue. Yes, Mr. Bansal (*Interruptions*).

SHRI M. S. GURUPADASWAMY: The unfortunate thing is, there is no real leader on that side to decide. (*Interruptions*).

PROF. C. LAKSHMANNA: We are interested in listening to their viewpoints also.

SHRI PAWAN KUMAR BANSAL: In deference to the wishes of the opposition to have more time for the matter, I would make only one or two points and conclude and then concede the floor to the Leaders of the opposition (*Interruptions*)

AN HON. MEMBER: You better take the earphone and then listen (*Interruptions*).

SHRI K. MOHANAN: Sir, you make Mr. Thangabalu deputy leader of the House. That is my request. Like Mr. K.K. Tewari at least you make him the deputy leader. (*Interruptions*).

SHRI LAL K. ADVANI: The Messages have come.

SHRI VISHWANATH PRATAP SINGH: He is putting the words in my mouth. Sir, I think I can agree and we can have the discussion tomorrow. We would go by what the leaders of the opposition say but with a request that whatever work comes they will cooperate.